

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
KATHLEEN P. MULLINIX,	)	
	)	
Plaintiff,	)	
	)	Civil Action
v.	)	No. 04-12684-WGY
	)	
KIKI BOGORAD-GROSS and	)	
LEONARD P. BOGORAD, as They	)	
Are Executors of the Will of	)	
Lawrence Bogorad,	)	
	)	
Defendants.	)	
_____	)	

**AFFIDAVIT OF LISA M. HODES**

Lisa M. Hodes, being duly sworn, deposes and states as follows:

1. I am an associate of the firm Sullivan & Worcester LLP, counsel to Defendants Kiki Bogorad-Gross and Leonard Bogorad, as Executors of the Will of Lawrence Bogorad. I make this affidavit on personal knowledge in Defendants' Motion for Summary Judgment.
2. Annexed to this affidavit as Exhibit A is a true and accurate copy of portions of the deposition transcript of Kathleen P. Mullinix, taken on March 1, 2006.
3. Annexed to this affidavit as Exhibit B is a true and accurate copy of portions of the deposition transcript of Leonard Bogorad, taken on January 19, 2006.
4. Annexed to this affidavit as Exhibit C is a true and accurate copy of portions of the deposition transcript of Kiki Bogorad-Gross, taken on January 20, 2006.
5. Annexed to this affidavit as Exhibit D is a true and accurate copy of the expert appraisal report from Christopher Devine of Mitchell, Maxwell & Jackson, Inc.

6. Annexed to this affidavit as Exhibit E is a true and accurate copy of portions of the deposition transcript of Renee Ring, the President of the Board of 1050 Fifth Avenue Cooperative Association, taken on December 13, 2005.

7. Annexed to this affidavit as Exhibit F is a true and accurate copy of the letter from Matthew A. Berlin, Esq. to Larry C. Kenna, Esq., dated February 11, 2004.

8. Annexed to this affidavit as Exhibit G is a true and accurate copy of the contract between Kathleen P. Mullinix and McGraime Woodworking, Inc., dated March 17, 2004, that was produced in discovery in this case.

9. Annexed to this affidavit as Exhibit H is a true and accurate copy of the email from Kathleen P. Mullinix to Kiki Bogorad-Gross, dated March 11, 2004, that was produced in discovery in this case.

10. Annexed to this affidavit as Exhibit I is a true and accurate copy of the email from Kiki Bogorad-Gross to Kathleen P. Mullinix, dated May 12, 2004, that was produced in discovery in this case.

11. Annexed to this affidavit as Exhibit J is a true and accurate copy of the email from Kathleen P. Mullinix to Kiki Bogorad-Gross, dated May 15, 2004, that was produced in discovery in this case.

12. Annexed to this affidavit as Exhibit K is a true and accurate copy of the email from Kathleen P. Mullinix to Kiki Bogorad-Gross, dated May 27, 2004, that was produced in discovery in this case.

13. Annexed to this affidavit as Exhibit L is a true and accurate copy of the email from Kathleen P. Mullinix to Kiki Bogorad-Gross, dated May 28, 2004, that was produced in discovery in this case.

14. Annexed to this affidavit as Exhibit M is a true and accurate copy of the email from Kathleen P. Mullinix to Kiki Bogorad-Gross, dated June 11, 2004, that was produced in discovery in this case.

15. Annexed to this affidavit as Exhibit N is a true and accurate copy of the email from Kathleen P. Mullinix to Kiki Bogorad-Gross, dated May 16, 2004, that was produced in discovery in this case.

Signed under the pains and penalties of perjury this 25<sup>th</sup> day of May, 2006.

/s/ Lisa M. Hodes  
Lisa M. Hodes

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on May 25, 2006.

/s/ Lisa M. Hodes

# **EXHIBIT A**

## **(1 OF 2)**

Vol. 1

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 04-12684-WGY

KATHLEEN P. MULLINIX,

Plaintiff,

vs.

KIKI BOGORAD-GROSS and LEONARD P.  
BOGORAD, as They Are Executors of the  
Will of Lawrence Bogorad,  
Defendants.

DEPOSITION OF KATHLEEN P. MULLINIX,  
taken pursuant to Notice under the applicable  
provisions of the Federal Rules of Civil  
Procedure on behalf of the Defendants, before  
Simonne J. Elwood, R.P.R. and a Notary Public  
in and for the Commonwealth of Massachusetts,  
at the office of Sullivan & Worcester LLP, One  
Post Office Square, Boston, Massachusetts,  
commencing on Wednesday, March 1, 2006 at  
8:41 a.m.

NEAL A. SALLOWAY - COURT REPORTERS  
FIVE CARDIGAN ROAD

WEST PEABODY, MA 01960  
781-581-3993 - 978-535-0313 - FAX 978-536-3142

00008

1 A 034-32-3364.

2 Q When did you first meet Professor Lawrence

3 Bogorad?

4 A December 1968.

5 Q And how was it that occasioned your first

6 meeting with Professor Bogorad?

7 A I was looking to arrange a postdoctoral

8 fellowship. I was finishing my Ph.D., and I

9 was going to do a postdoc starting the next

10 September, September of 1969.

11 Q Did you pursue that postdoctoral fellowship?

12 A Yes, I did.

13 Q At what institution of higher learning?

14 A Harvard University.

15 Q And how long were you involved in that

16 fellowship?

17 A Just shy of three years.

18 Q Until late 1972, is that correct?

19 A June. I left in June 1972.

20 Q Would you describe, in general terms, please,

21 what was involved in that academic pursuit?

22 A I was a -- I did a research project, and so I

23 was in the lab all the time, and we published

00010

1 A I was there for nine -- Wait. Yeah, nine

2 years. I left in 1981.

3 Q Was that a full-time position?

4 A Uh-huh. Yes. After I was Research Chemist,

5 was I Assistant Director of the NIH for two

6 years.

7 Q After you left Harvard in June of 1972, did

8 you pursue any other academic pursuits?

9 A No.

10 Q Okay. You joined the work force, correct?

11 A Yeah.

12 Q After you left Harvard in June of 1972, when

13 was the next time you met Professor Bogorad?

14 A I don't remember if I -- I think I saw him --

15 Let me think just a moment. I saw him at the

16 NIH probably -- Yeah. Right. Probably in

17 1973. He was at a meeting. And then I --

18 and then -- then I saw him in 1975 in

19 November.

20 Q When? I'm sorry.

21 A In November of 1975.

22 Q And what occasioned the meeting in November

23 of 1975?

00011

1 A We both attended the American Society for

2 Cell Biology meeting.

3 Q Where was that?

4 A In Puerto Rico.

5 Q Do you recall where in Puerto Rico?

6 A San Juan.

7 Q Was that a chance encounter, or was there --

8 A A chance.

9 Q -- a plan?

10 A Chance.

11 Q What transpired between the two of you at the

12 Puerto Rico meeting?

13 A We -- I met -- I met him in the big hall that

14 was having poster sessions and so forth, and

15 I hadn't seen him for awhile, and he invited

16 me to join his group for dinner which I did,

17 and he said he would see me the next day and

18 that I should meet him at the posters if we

19 didn't see each other during the day.

20 I met him at the posters in the late

21 afternoon, and he asked me to come to dinner,

22 and there was a, like a dance, a party, you

23 know, a meeting, an organized party at a big



00012

1 fort in San Juan, and so he asked -- So I met  
2 him for dinner, and he asked me to meet him  
3 at the bus. I met him at the bus, and then  
4 we went to this dance, and we spent the  
5 evening together.

6 Q How long were the two of you together that  
7 evening?

8 A We spent the entire evening together.

9 Q Are you familiar with your complaint in this  
10 case?

11 A I think so.

12 MR. VARN: Do you have a copy? Off  
13 the record.

14 (Whereupon an off-the-record  
15 discussion took place.)

16 MR. VARN: Back on the record.

17 Would you please mark that as Mullinix  
18 Exhibit 1?

19 (Whereupon the Stenographer marked as  
20 Exhibit No. 1 - Complaint and Demand for Jury  
21 Trial.)

22 Q I just want to show you, Ms. Mullinix, the  
23 document that I've asked the court reporter

00014

1 A Okay. Sorry.

2 Q The first sentence of that recites, and I

3 quote, "In or about 1975, Ms. Mullinix and

4 Mr. Bogorad began a relationship." Do you

5 see that?

6 A Uh-huh.

7 Q And does that make reference to events that

8 transpired in San Juan that you just

9 testified about?

10 A That's correct.

11 Q Was there anymore to the relationship other

12 than dinner and dancing?

13 A Yes.

14 Q What more?

15 A We had an intimate relationship. We spent

16 the night together.

17 Q And the next day, was there a continuation of

18 the relationship, or did people go their

19 separate way?

20 A No. We were together from then on as much as

21 we could be.

22 Q Well, I'm just referring to Puerto Rico. How

23 long did --

00016

1 Q In or as of November 1975, were you married?

2 A Yes.

3 Q To whom?

4 A Joseph Mullinix.

5 Q When did the two of you get married?

6 A June 18th, 1966.

7 Q Was that your first marriage?

8 A Yes.

9 Q Did you -- At some point, did you and Mr.

10 Mullinix get divorced?

11 A Yes.

12 Q When did you get divorced?

13 A I think the divorce was finalized maybe in

14 2000 or maybe 1999. I don't remember exactly

15 the date.

16 Q At some point, did you and Mr. Mullinix cease

17 living together?

18 A Yes.

19 Q And when did that transpire?

20 A On March 31st, 1997.

21 Q Were you living in New York City at the time?

22 A In '97?

23 Q Yes.

00019

1 Q And is he presently employed?

2 A Yes.

3 Q What does he do for a living?

4 A He's a securities trader.

5 Q For what firm?

6 A He's essentially self-employed.

7 Q And his twin is named?

8 A Brendan Philip Mullinix. B-R-E-N-D-A-N.

9 Q And where does he reside?

10 A 142 Wooster Street.

11 Q The two brothers live together?

12 A Correct.

13 Q Is he gainfully employed?

14 A Yes.

15 Q What does he do?

16 A He is a Vice President of a real estate

17 investment trust firm.

18 Q Which one?

19 A Lexington Corporate Properties.

20 Q Is his office in New York City?

21 A Correct.

22 Q After the Puerto Rico meeting in November of

23 1975, when did you next have occasion to

00021

1     transpired during that telephone

2     conversation?

3   A   No.

4   Q   And when was the next communication, either

5     in any form, with Professor Bogorad after

6     that telephone call?

7   A   We talked essentially every day.

8   Q   Was there -- For how long?

9       MS. JERRETT: Objection. You can

10    answer.

11   A   We probably talked four, five times a day.

12     He called me all the time, and I called him

13     when I could, and our calls would probably

14     range anything from five minutes to an hour

15     depending on what we were doing.

16   Q   And how long did that, what I'll call, daily

17     telephone-conversation relationship last?

18   A   Forever.

19   Q   I take it by forever, you meant until his

20     passing on December 28, 2003?

21   A   That's correct.

22   Q   Did Professor Bogorad, in fact, come to

23     Washington, D.C., on or about December 10,

00028

1 Q How long did you live in Ridgewood, New

2 Jersey?

3 A Until April of 1994.

4 Q What happened then?

5 A We sold our house and moved. We bought an

6 apartment in the city in New York.

7 Q I'm sorry. That was 1994?

8 A '94.

9 Q 1994. Was that the apartment located at 975

10 Park Avenue?

11 A Yes.

12 Q What's the cross street there?

13 A 84. 83. Excuse me. 83.

14 Q How long did you remain employed by Columbia

15 University?

16 A Until October 10th, 1987.

17 Q What happened then?

18 A I left to start a business.

19 Q And the name of that business?

20 A The first -- The initial name was

21 Neurogenetic Corporation,

22 N-E-U-R-O-G-E-N-E-T-I-C, Corporation, and we

23 changed the name of the company in 1993, I

00029

1 think, to Synaptic, S-Y-N-A-P-T-I-C,

2 Pharmaceutical Corporation.

3 Q That was located in New Jersey, correct?

4 A Correct.

5 Q You were the Chief Executive Officer, is that

6 correct?

7 A Correct.

8 Q And how long did you remain with that

9 enterprise first known as Neurogenetic and

10 then subsequently known as Synaptic?

11 A Until September 16th, 2002.

12 Q What happened then?

13 A I left.

14 Q Did you pursue further gainful employment or

15 self-employment after that?

16 A For awhile, I didn't; and since that time, I

17 have worked from time to time, not much, as

18 an independent biotechnology consultant.

19 Q When did you start doing independent

20 consulting work?

21 A I had -- I did -- I did that assignment in

22 maybe April of 2003. Yeah. April of 2003,

23 and I did another one in the summer of early

00030

1 fall, I think. Wait. Yeah. I finished it

2 in September of 2003.

3 Q So you had an assignment that started in

4 April of 2003 and lasted until September of

5 2003?

6 A No. It probably lasted from maybe like for

7 six weeks.

8 Q Okay. I guess I'm a little confused. Was

9 there one assignment or two?

10 A Two.

11 Q And the first was in April for a handful of

12 weeks, correct?

13 A Yeah. Right.

14 Q And the second was in September?

15 A Yeah, the same.

16 Q Have you done any since?

17 A Yes. In -- Let's see. In the spring of

18 2004, I worked with a group to see if we

19 could start a business around health,

20 nutraceutical, science-based nutraceutical.

21 I wrote a business plan, and the idea was to

22 see if we could fund it, and we could not.

23 The person who was sort of the nucleating



00034

1 MS. JERRETT: Objection. You can

2 answer.

3 A In general terms, it was the same arrangement.

4 Laurie would try to -- We would try to see

5 each other once a month. He would typically

6 come to New York. Sometimes he would have a

7 meeting in Washington, and I'd go down to

8 Washington. Sometimes we met each other at

9 scientific meetings.

10 Q So your best memory is, during that 13-year

11 period, the two of you would get together

12 approximately once a month?

13 A Right.

14 Q And did it continue to be an intimate

15 relationship?

16 A Yes.

17 Q Did you, during that period of time, any time

18 during those 13 years, disclose to your

19 husband that you were having an affair with

20 Professor Bogorad?

21 A No.

22 Q Do you know whether he made any disclosure to

23 his wife that he was having an affair with

00035

1     you?

2   A   Not to my knowledge.

3   Q   At some point, did your husband learn of the

4     affair?

5   A   Yes.

6   Q   And do you recall the circumstances under

7     which he learned of it?

8   A   I told him in 1997.

9   Q   What caused you, at that point in time, to

10    decide to make that disclosure?

11   A   The pressures of -- The pressures of living a

12    double life became too great for me, and the

13    precipitating event was an illness that

14    Laurie had in about 1995, '94 or '95. I

15    think it was '95.

16   Q   What sort of illness?

17   A   He had a -- He had a bacterial infection of

18    something called H-Pylori which gave him a --

19    he had an ulcer that bled terribly. He had a

20    big hemorrhage.

21   Q   Was he hospitalized?

22   A   Yep.

23   Q   Where?

00038

1 A 76.

2 Q Is it fair to say that you contemplated that

3 he would, in all likelihood, predecease you?

4 MS. JERRETT: Objection. Time frame.

5 Q As of the mid to late-'90s?

6 A We always did. Statistics says that that's

7 what would happen. I always used to say,

8 "But I could be hit by a truck tomorrow." We

9 would have that discussion.

10 Q But it's fair to say, is it not, that just as

11 an actuarial matter, in your ordinary course

12 of things, you expected to live longer than

13 he would, correct?

14 MS. JERRETT: Objection. You can

15 answer if you know the answer.

16 A Actuarially speaking, yes.

17 Q I believe you testified earlier that you and

18 your husband separated at the end of March

19 1997, is that right?

20 A Yeah.

21 Q Was that separation, roughly, contemporaneous

22 in time with your disclosure to him that you

23 were having an affair with Professor Bogorad?

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1 A Maybe a couple of months after that.

2 Q And at that point, you and your husband were

3 living on Park Avenue in New York in an

4 apartment, correct?

5 A Yes. We -- We were; but in 1994, I think --

6 Wait. Yeah. 19 -- Early 1993, my husband

7 took a job at Yale, and so he rented an

8 apartment in New Haven and was there during

9 the week.

10 Q Okay. And at Park Avenue on weekends,

11 typically?

12 A Yes.

13 Q And when you separated at the end of March

14 1997, which one of you moved out?

15 A My husband.

16 Q And you continued to reside at 975 Park

17 Avenue, correct?

18 A Yeah.

19 Q For approximately how long did that continue

20 to be your residence?

21 A Until July 1st or 2nd, 1999.

22 Q And was that when you purchased the

23 condominium apartment on East 87th Street?

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1 A That's correct.

2 Q And was that apartment located at 170 East

3 87th?

4 A That's correct.

5 Q And what was the cross avenue there?

6 A This was between Lex and Third.

7 Q Did you either retain or receive ownership of

8 the Park Avenue apartment in connection with

9 your divorce?

10 A No. We sold the apartment together and

11 divided the proceeds.

12 Q And was the sale of the Park Avenue apartment,

13 roughly, contemporaneous with your purchase

14 of the 87th Street condo?

15 A Yeah.

16 Q And I'm trying to get my timeline right.

17 Were you with -- Strike that.

18 What were you doing, if anything, for

19 gainful employment in 1999?

20 A I was employed by Synaptic.

21 Q Still at Synaptic. So I'm clear, you were

22 living in New York City, but your office was

23 in Paramus, New Jersey, correct?

00041

1 A Yes.

2 Q So, you were doing, in essence, of reverse

3 commuting each day, is that right?

4 A Yep.

5 Q Okay. Am I correct that you continued to

6 reside on East 87th Street until

7 approximately the fall of 2002?

8 A No. I had lived there until -- until April

9 7, 2003.

10 Q And at that point, you sold that condominium,

11 correct?

12 A Yeah. Actually, I sold it, and the

13 transaction was at the end of March, and I

14 stayed in the apartment for another week.

15 Q Between July of 1999 when you bought that

16 apartment and April of 2003 when you sold it,

17 would you please describe the frequency of

18 your personal contact with Professor Bogorad?

19 A Laurie came to New York just about every

20 weekend. I, occasionally, came here.

21 Mostly, he came to New York. My parents were

22 very old and in the process of, you know, --

23 they both died; one in 2002, and my mother in

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1 2003. So I came to New York; I mean; to  
2 Massachusetts to -- When I would come to do  
3 things for them, I would stay in Lexington.  
4 And what did you ask me? I'm sorry.

5 Q I was asking you how frequently the two of  
6 you saw each other between July of '99 and  
7 April of 2003?

8 A We were together, except, typically, maybe  
9 like three days in the middle of the week.  
10 Laurie would come up to Cambridge.

11 Q At some point, did you learn that Professor  
12 Bogorad's wife had been institutionalized?

13 A Yes.

14 Q When did you learn that?

15 A When she was institutionalized.

16 Q When was that?

17 A It was, I think, in January of 1998. I'm not  
18 totally sure if it was January, but it was --  
19 I don't think it was -- I don't think it was  
20 before the new year, but it could have been;  
21 end of '97 early '98.

22 Q And you're aware, are you not, that she  
23 remains institutionalized to this day,

00044

1 but he was very interested in a theoretical  
2 project he was doing. So he went to work,  
3 and he was writing, and he did all kinds of  
4 stuff. His students would come to visit. So  
5 he went to the office during the week.

6 Q And that was the office at Harvard  
7 University, correct?

8 A Uh-huh.

9 Q And during that period of time, he resided,  
10 at least during the week, at the house in  
11 Lexington?

12 A Yes.

13 Q Do you know or did he disclose to you the  
14 frequency of his visits to his wife during  
15 that period of time?

16 A Yes.

17 MS. JERRETT: Objection. What time  
18 period?

19 Q July 1999 until 2003.

20 A I forgot. I should add something to what --  
21 Did you ask me before how often we were --  
22 how we interacted between '99 and 2003; was  
23 that the question?



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1 Q I believe I did.

2 A Yes. So, in addition to his being in New

3 York, we went on vacations together. We went

4 on a lot of vacations as a matter of fact.

5 So that would be weeks, a week here, a week

6 there, ten days here.

7 Q Am I correct that apart from vacations

8 involving travel that between July of 1999

9 and April of 2003 when you owned the 87th

10 Street apartment that the typical pattern was

11 that he would come to New York most weekends;

12 occasionally, you would come to the Boston

13 area; and during the week, he was in

14 Massachusetts and going to his office at

15 Harvard, correct?

16 A With the exception of on two occasions, we

17 took two different weeks' vacations in New

18 York, and we went sightseeing in New York

19 together. I just lost my thought. We went

20 to California. No. That was travel. What

21 else? I forget what you asked me. I think

22 that's right.

23 Q Did Professor Bogorad or anyone else tell you

00050

1 Mrs. Bogorad died, and I don't know. I  
2 certainly wouldn't suggest that he divorce  
3 his wife. So I don't think we talked about  
4 that.

5 Q My question is a little different. Did the  
6 "divorce" word involving Professor Bogorad  
7 and his wife come up at all in discussions  
8 between the two of you after you disclosed  
9 the fair to your husband?

10 A I don't remember. I don't remember.

11 Q I believe you testified a moment ago that  
12 there was discussion between the two of you  
13 to the effect that the two of you would marry  
14 after Mrs. Bogorad passed away, is that  
15 correct?

16 A Yeah.

17 Q And when did discussions of that subject  
18 matter along those lines begin?

19 A I think -- I think -- I think probably right  
20 after my husband and I separated.

21 Q In early 1997, correct?

22 A Yeah.

23 Q Is it fair to say, Ms. Mullinix, that you

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1 understood that so long as Mrs. Bogorad were  
2 alive that Professor Bogorad would not  
3 divorce her?

4 MS. JERRETT: Objection.

5 A I certainly wasn't talking about it.

6 Q Was that in your mind his understanding that  
7 as long as Mrs. Bogorad was alive that he  
8 would not pursue divorce proceedings?

9 MS. JERRETT: Objection. You can  
10 answer if you understand.

11 A Yeah. I guess it was my understanding. I  
12 didn't think he would, I mean, or he should.  
13 His wife was -- needed huge amounts of care.  
14 I don't see how you divorce someone who is  
15 essentially dead but needs a huge amount of  
16 care. Maybe people do that. I don't know.

17 Q Was it also your understanding that unless  
18 and until Mrs. Bogorad died, you and  
19 Professor Bogorad could not or would not get  
20 married?

21 MS. JERRETT: Objection.

22 A Our understanding was that we were man and  
23 wife except we weren't married.

00055

1 Q And approximately what was the monthly amount  
2 during that period for maintenance during the  
3 period that you owned the 87th Street  
4 condominium?

5 A It was \$870.

6 Q Did Professor Bogorad pay you, or did he pay  
7 the condominium association directly?

8 A He paid me.

9 Q And was there a discussion between you,  
10 between you and Professor Bogorad, concerning  
11 that monthly payment? I'll ask it a  
12 different way.

13 How did that start that pattern of him  
14 paying you the monthly maintenance fee of  
15 approximately \$870 a month?

16 A Laurie said, "I want to pay the maintenance."

17 Q So he offered to do it?

18 A Uh-huh.

19 Q And you agreed?

20 A Yeah.

21 Q And what, if anything, did you do or promise  
22 to do in exchange for that payment?

23 A Nothing.

00058

1 Q And how did he do that with you; was it cash;

2 did he write checks?

3 A Checks. He wrote checks every month.

4 Q Did he make -- During that period of time

5 and, again, I'm just referring to the time

6 period when you owned the 87th Street

7 condominium, did he make any other payments

8 to you other than the checks for the monthly

9 maintenance fee for the condominium that you

10 recall?

11 A Well, we bought furniture together, and I

12 bought -- I would buy, you know, buy things,

13 and he would reimburse me. We did some

14 painting. We had the floors refinished. So

15 I would typically pay for things, and he

16 would reimburse me.

17 He paid for -- I don't know what you

18 mean payment exactly; but when we were

19 together, you know, he paid for everything,

20 going to dinner or the theater or whatever if

21 that's included in your question.

22 Q Prior to your acquiring the ownership of the

23 87th Street condominium, did Professor

00059

1 Bogorad make any other payments directly to  
2 you; and so I'm excluding things like picking  
3 up the dinner tab and stuff like that?

4 A I don't think so. You mean just like things  
5 for my house?

6 Q I'm asking anything; if you recall any  
7 instance, prior to you buying the 87th Street  
8 condominium, in which Professor Bogorad made  
9 any payments directly to you by cash, by  
10 check, by wire, by anything; do you recall?

11 A He paid for some theater subscription tickets.

12 I think I would buy -- I don't think so.

13 Q Am I generally correct that when the two of  
14 you were together, prior to your buying the  
15 87th Street condominium, that he would  
16 generally pick up the tab for things like,  
17 you know, dinner, entertainment, things of  
18 that sort?

19 A During what period of time?

20 Q Prior to 87th Street.

21 A Up until -- From 1997 on, he picked up the  
22 tab whenever we did anything together.

23 Q And prior to 1997 when you were together, who

00060

1 picked up the cost or the tabs?

2 A We typically shared the costs.

3 Q Was there a discussion at all between the two

4 of you, in or about, you know, 1997, as to

5 the change from cost sharing to him picking

6 up the tab?

7 A It was in -- Actually, in the middle of 1998.

8 Yeah. Early 1998, middle of 1998.

9 Q And what discussion did you have with him on

10 that subject?

11 A It was part of our agreement that we were

12 committed to each other as married people,

13 and that's the way we would live.

14 Q As best you can recall, what did he say to

15 you and you say to him in connection with

16 that discussion?

17 A The discussion was that we were going to go

18 forward together as a couple and live

19 together as a commuting couple, but we were a

20 couple together, that our relationship would

21 be public, that we considered ourselves to be

22 man and wife, that I was committed to him

23 forever and he to me.

00061

1 Q And more specifically on the subject of, as  
2 we discussed, making payments or picking up  
3 tabs, what did he say to you and you say to  
4 him on that subject?

5 A I don't think it was explicit. He just  
6 said -- He would just say, "Don't be  
7 ridiculous. This is mine." That's what he  
8 did.

9 Q In respect of the 87th Street condominium,  
10 there were expenses of living other than the  
11 maintenance fee, correct?

12 A Yeah.

13 Q Was there a mortgage?

14 A Yes.

15 Q Who paid that?

16 A I did.

17 Q And did you pay it out of your own resources?

18 A Yes.

19 Q And there were utility bills, correct?

20 A Yes.

21 Q Who paid that?

22 A I did.

23 Q Out of your own resources?



00062

1 A Yes.

2 Q The \$870 maintenance fee payments which he

3 made to you in respect of 87th Street, did

4 you declare any of those as income on your

5 federal income tax returns?

6 A No.

7 Q Did you declare it as income on your New York

8 State income tax returns?

9 A No.

10 Q Did you, during that period of time, also

11 file New York City income tax returns?

12 A Yeah.

13 Q And did you declare any of those payments as

14 income on your New York City income tax

15 returns?

16 A No.

17 Q Did you ever consider declaring any of those

18 payments as income on any of your income tax

19 returns?

20 A It never occurred to me.

21 Q Is it fair to say, Ms. Mullinix, that those

22 \$870 monthly payments which he made to you in

23 respect of the 87th Street condominium

00066

1 property of you and his estate?

2 A No, no.

3 Q What changed?

4 A We bought them together, and I guess I would

5 say there's no way he would have thought that

6 this furniture would be going to somebody

7 else if he died. I don't.

8 Q After he passed away, did you make any

9 disclosure to the executors of his estate

10 that you were holding items that the two of

11 you had purchased jointly?

12 A Kiki Bogorad-Gross and her family came to

13 visit our apartment in New York, so she --

14 and we have happily disclosed the things we

15 had bought together. So she knows what was

16 bought together as well as I do even the

17 chairs that we have discussed in our document

18 or whatever, the desk chairs.

19 Q At some point in time, you were approached by

20 someone who was interested in purchasing the

21 87th Street condominium, correct?

22 A Yes.

23 Q Who was that?

00067

1 A Jeffrey Ascherman.

2 Q Was he a neighbor?

3 A Yeah. He lived in the building.

4 A-S-C-H-E-R-M-A-N. I don't know if it's one

5 N or two. Jeffrey.

6 Q When did Mr. Ascherman first approach you?

7 A In -- I think it was the late summer of 2002

8 or spring. It was some time, significant

9 time before I ever called him up. I don't

10 remember.

11 Q How did he first approach you?

12 A He knocked on the door on Saturday morning

13 and asked if I would consider selling my

14 apartment to him.

15 Q What did you say?

16 A "No." I said, "I live here. This is my

17 home."

18 Q As of that point in time or prior to then,

19 had you given any thought or contemplated

20 selling the 87th Street condominium?

21 A No.

22 Q Would you describe what happened next in

23 terms of your contemplation of a possible

00068

1 sale of that condominium unit?

2 A So, I said, "No. I live here. I love the  
3 apartment." And he had the apartment next  
4 door to mine; I guess; was on or might come  
5 on the market was his idea, and he could buy  
6 that next-door apartment and join it with  
7 mine, and he would have a lot of space. He  
8 had several kids. And that was -- Well, he  
9 wasn't totally outlandish that he knocked on  
10 the door, and so Laurie was there, and we  
11 kind of said, "That was funny." And that was  
12 a Saturday.

13 Sometime after, he said, "You know,  
14 that might not be a bad idea." And it was  
15 the first time he said, "I'm not thrilled  
16 with the neighborhood. I don't like 86 and  
17 Lex. It's too rough." And I said, "This is  
18 great space. C'mon." And then sometime  
19 thereafter, we were having dinner with my  
20 twin sons which we did a lot, and Laurie  
21 said, "Have you told Brendan and David about  
22 Dr. Ascherman?" And I said, "No." So he  
23 said, "Well, tell them." And I told them,

00069

1 and I was -- I thought it was a joke, and one  
2 of my sons said, "Well, did you ask him what  
3 he had in mind?" I said, "No. You know, I  
4 don't want to move anywhere." And Laurie and  
5 Brendan started with, "You know, you should  
6 talk to him. You should ask him what he has  
7 in mind. Clearly, he wants this place."

8 He had a religious affiliation down  
9 the street and did not drive on the weekends,  
10 so he wanted to be close. So I said, "No."  
11 And Laurie asked me several times. He said,  
12 "You know, I think it would be a good idea  
13 for you to move." And I didn't. I wasn't  
14 interested; but, you know, he asked me a  
15 bunch of times, and it was after a weekend  
16 that he had mentioned it again, and I saw the  
17 guy's wife in the lobby.

18 Q I hate to interrupt you. The guy's wife is  
19 Dr. Ascherman's wife?

20 A Yes. Sorry. And so I said, "Oh, are you  
21 still looking to move?" And she said, "Well,  
22 you know, we really like your apartment. Are  
23 you sure you wouldn't think about selling

00070

1 it?" And I said, "Well, I don't know. Maybe  
2 we should talk about it."

3 And so I think they called me back. I  
4 think the husband called me back the next day  
5 or something, and I don't remember. I think  
6 maybe he and his wife came to look at the  
7 apartment, or the wife came alone because she  
8 hadn't come that day that he came to the  
9 door. I just don't remember. And so he  
10 asked me what I would consider selling it  
11 for.

12 Q Did you answer?

13 A No. I had no idea. So I called my son  
14 and --

15 Q Which one?

16 A Brendan.

17 Q He's the one in the real estate business?

18 A That's right. And I said, "This is nuts.  
19 Should I suggest a price to him?" And he  
20 looked around at the apartments that had sold  
21 in the neighborhood or something, and he  
22 said -- he thought like \$1.2 million would be  
23 a very good price. I had paid \$800,000 for

00071

1 the apartment in -- it was July of '99. So I  
2 talked to Laurie, and he said, "Look, if you  
3 can get \$1.2 million for that apartment, you  
4 should sell it. I would like you to move  
5 closer to Fifth Avenue. I don't like  
6 Lexington and 87th. It's rough." So I told  
7 the Aschermans that I would sell them my  
8 apartment for \$1.5 million.

9 Q I'm sorry. 1.5?

10 A Yes.

11 Q How much time transpired between that first  
12 Saturday morning knock on the door by Dr.  
13 Ascherman until you told them that you would  
14 sell for \$1.5 million?

15 A See, I don't remember exactly when Dr.  
16 Ascherman came to the door. I think it was  
17 in the spring, but it was sometime in  
18 November because we had -- we had a couple of  
19 discussions about the price before  
20 Thanksgiving because I remember they went  
21 away for Thanksgiving and so something like  
22 that.

23 Q So a period of several months elapsed between

00074

1 A Yeah.

2 Q And, ultimately, did you agree on a price?

3 A Yes.

4 Q And what did you agree on?

5 A 1.325.

6 Q During the course of that process of

7 discussions with the Aschermans, did you go

8 back to your son, Brendan, and seek his

9 advice?

10 A He thought 1.1 or 1.2 was a reasonable thing

11 to do, you know, that that would be a good

12 price for the apartment. Yeah. I talked to

13 him. I talk to Laurie.

14 Q Your son, Brendan, is in the real estate

15 business in New York, correct?

16 A Well, he works for a real estate investment

17 trust in New York, but he doesn't do

18 business -- I mean, his business is not in

19 New York.

20 Q Am I correct that when you first spoke with

21 your son, Brendan, about the possible sale of

22 the 87th Street condo, he did some

23 investigation or research, is that right?



00075

1 A Yes, which I could have done on line, but I

2 didn't. He did.

3 Q And he advised you that -- I think you said

4 something in the neighborhood of 1.2 million

5 would be a fair price?

6 MS. JERRETT: Objection.

7 A He said --

8 Q Is that right?

9 A He said, "If you can sell the apartment for

10 1.1 or 1.2, that would be -- that would be

11 not a bad thing to do. You should think

12 about it."

13 Q And at the end of the discussions, you

14 received \$1,325,000, correct?

15 A Right.

16 Q I believe you testified that Professor

17 Bogorad made statements to the effect that he

18 didn't like 86th and Lexington?

19 A Right.

20 Q What did he say was wrong with it?

21 A It's a -- He thought the crowd was rough.

22 There are -- There are a lot of homeless

23 people who actually hang out on the corner of

00077

1 the newspaper; did you get a broker?

2 A I called a real estate broker.

3 Q And who did you call.

4 A Judith Durham.

5 Q And what agency is she with?

6 A Stribling.

7 Q Is she still with Stribling to your

8 knowledge?

9 A Yeah.

10 Q And had you known her previously?

11 A She handled the sale of Park Avenue and my

12 purchase of 87th Street.

13 Q Okay. So she had been your broker with

14 respect to two previous transactions,

15 correct?

16 A Right.

17 Q Did you have a positive feeling towards Ms.

18 Durham?

19 MS. JERRETT: Objection.

20 A Yeah.

21 Q And when you -- What did you tell her when

22 you first contacted her?

23 A I told her that -- I told her what had

00078

1     transpired with the Aschermans and that I was  
2     reluctant to seek her advice because if I  
3     sold the apartment to Mr. Ascherman, I  
4     would -- it wouldn't be through a broker, so  
5     I didn't want to call up and pick her brain,  
6     but did she think this was crazy and,  
7     obviously, I would have to find another  
8     apartment and what does she think.

9   Q   What did she say?

10  A   She said, "I think it would be a good thing  
11     to do." She said, "There's been a big  
12     appreciation of your apartment." When I  
13     bought the apartment in 1999, it was just  
14     being converted to condos. It had been -- It  
15     had been built as a condo. The condo scheme  
16     hadn't worked, so they had essentially rented  
17     the apartments, and the market was better, I  
18     guess. So her thought when I bought it was  
19     that it was a very advantageous price, and  
20     she said, "I think it's a good idea," and I  
21     said, "Well, I don't know if I could find  
22     another apartment. You know, I could make a  
23     lot of money here, but I have to find

00079

1     someplace else to live." So she said, "Well,

2     let's go out and look." So we did.

3   Q   And over what period of time did you look at

4     other possible apartments?

5   A   Just a couple of weeks.

6   Q   And was this in approximately November of

7     2002?

8   A   Uh-huh.

9   Q   Does uh-huh mean yes?

10  A   Yes. I'm sorry.

11  Q   Do you recall approximately how many other

12     apartments you looked at?

13  A   Maybe ten.

14  Q   Were they all in Manhattan?

15  A   Yes.

16  Q   And can you describe just in general terms

17     what the boundaries of the areas in Manhattan

18     that you were looking in?

19  A   We looked between -- We look at apartments

20     between 72nd and maybe 90th between Park and

21     Fifth. I think we looked at one apartment on

22     72nd between Park and Lex.

23  Q   So your geography was approximately 18 blocks

00091

1 I had told him that I liked this apartment  
2 that was on the 11th or whatever it was  
3 floor. And so I think -- I think what I did  
4 was call the -- I think I called the -- God,  
5 I don't remember; whatever broker was  
6 representing the seller. It was in the -- on  
7 the internet thing and asked if I could come  
8 see it.

9 Q And I take it the response was in the  
10 affirmative because you went to see it on the  
11 Wednesday before Thanksgiving 2002, correct?

12 A Right.

13 Q First of all, how did you get there; did you  
14 just walk down the street?

15 A I walked.

16 Q The distance from your 87th Street apartment  
17 to 86th and Fifth is about three long and one  
18 short block, correct?

19 A Yeah.

20 Q And did you meet with anyone there, that is  
21 to say, a broker?

22 A Yes, the broker.

23 Q And do you recall who that was?

00093

1 A Ten minutes, tops.

2 Q A walk-through?

3 A Yeah.

4 Q Did you make any observations?

5 A That it was a wreck and very expensive.

6 Q Do you recall what the listing price was?

7 A Wait. I think the listing price, at that

8 point, was maybe like 2.5 or something, 2.4.

9 Q Million?

10 A Correct.

11 Q Do you recall what the listing price had been

12 on the 11th floor apartment that you had

13 liked?

14 A Yeah. That was around maybe 1.1.

15 Q So this was twice as much and then some,

16 correct?

17 A Yeah.

18 Q Was it -- What differentiated the two

19 apartments; was it bigger; was it --

20 A It was bigger.

21 MS. JERRETT: Objection.

22 Q Okay. So you looked at it, and you said it

23 was too expensive, or you thought it was too

00103

1 the Aschermans, had you been back at all to  
2 look at Apartment 15B, or had you just been  
3 there on the one occasion on the day before  
4 Thanksgiving 2002?

5 A No. I went back sometime --

6 Q When did you go back?

7 A I don't remember, but it was right after --  
8 after I called Judith Durham, and she said  
9 that they had lowered the price, and I don't  
10 think she hadn't seen it because we didn't  
11 even go together. So the two of us went over  
12 there.

13 Q Do you recall when that visit happened?

14 A Maybe the second week of January or so or the  
15 third. It was shortly after I came back.

16 Q And you and Ms. Durham went over there,  
17 correct?

18 A Yes.

19 Q Anybody else with you?

20 A No.

21 Q How long were you there?

22 A 15 minutes.

23 Q I'm going to indulge in the shrewd surmise

00104

1 that the apartment hadn't improved any in the  
2 passage of time?

3 A No.

4 Q Do you have any other memories from that  
5 visit as to your observations other than the  
6 ones that you remembered from the prior  
7 visit?

8 A No.

9 Q Still a wreck?

10 A Yeah.

11 Q But you had learned that the price had been  
12 reduced from the original asking price?

13 A Yes.

14 Q Correct?

15 A Yes.

16 Q And what happened next with respect to  
17 Apartment 15B?

18 A I talked to Laurie about it. Laurie had seen  
19 the floor plan over Thanksgiving because I  
20 had the thing, and we had the floor plans and  
21 a couple of other things around the house;  
22 and when I had told him about the place in  
23 November, I said, you know, "It's too



00105

1 expensive; and besides that, it's a wreck."

2 And he said, "Well, I could pay for the

3 renovations." And I said, "You haven't even

4 seen it." And then when -- in January, I

5 told him I had gone back, and the price was

6 down, but it still needed all these huge

7 renovations, and he said, "Well, I could pay

8 for the renovations and, obviously, I'll pay

9 for maintenance as I have been."

10 Q Do you recall, at that point in time, what

11 the monthly maintenance fee was on Apartment

12 15B?

13 A Yeah. It was 18 something. I think, 1,880

14 or 19 something. It was 18. I ought to

15 know. I pay the damn thing now. I don't

16 know. 18 something, whatever it is.

17 Q So the record is flushed out on this, what do

18 you get in exchange for the monthly

19 maintenance fee that you pay to the co-op?

20 A I don't know. You get to live there. It

21 supports the -- I don't know. The upkeep of

22 the building. I guess they pay some taxes.

23 I don't know.

00109

1 Q That took place in person as opposed to over  
2 the telephone, correct?

3 A Yes.

4 Q Was anybody else present, or was it just the  
5 two of you if you remember?

6 A Well, that would have taken place probably  
7 Thanksgiving weekend, and I suspect I would  
8 have probably -- I don't know when I showed  
9 it to him.

10 Q Maybe I misunderstood. I thought you said  
11 that sometime in mid-January of 2003 after  
12 you returned from Asia, you went back with  
13 Ms. Durham and subsequently had a discussion  
14 with Professor Bogorad. Did I get the  
15 sequence out of whack?

16 A I told him about it in November when I first  
17 saw it.

18 Q Well, let's focus --

19 A And I had the plan. I picked it up.

20 Q I apologize. I misunderstood. Let's rewind  
21 back to Thanksgiving weekend of 2002. You  
22 had a discussion with Professor Bogorad about  
23 Apartment 15B?

00110

1 A Yeah. Yes.

2 Q And do you recall where that discussion took

3 place, that is to say, where you were at the

4 time?

5 A I probably told him over the phone and sort

6 of -- I'm sure we talked about it again over

7 Thanksgiving weekend with the other places

8 that I had seen.

9 Q The floor plan for 15B, did you have it in

10 your hands before you went over on the

11 Wednesday before Thanksgiving?

12 A No.

13 Q Did you get it on that date?

14 A Uh-huh.

15 Q Okay. Uh-huh means yes?

16 A Yes.

17 Q And then -- And then, as I recall your

18 testimony, Professor Bogorad came to New York

19 on the day after Thanksgiving, correct?

20 A Uh-huh.

21 Q Was that -- Either that day or over that

22 weekend, was that the first time that you and

23 he discussed Apartment 15B?

# **EXHIBIT A**

## **(2 OF 2)**

00115

1 15B?

2 A Judith Durham called me on Wednesday or  
3 Thursday. I think we -- I think we did  
4 the -- We went to see -- Laurie and I went to  
5 see the place together on the 7th. So she  
6 called me on Wednesday or Thursday and said  
7 that there was interest in the apartment,  
8 that someone had made or was going to make an  
9 offer, and she said -- she thought I should  
10 think seriously about it, and that was the  
11 next discussion I had about it.

12 Q All right. I think you testified that you  
13 and Professor Bogorad, at some point, went  
14 over to see the apartment together, is that  
15 correct?

16 A Uh-huh.

17 Q You're nodding. Is that yes?

18 A Yes.

19 Q She can't take down nods.

20 A Yes. I'm sorry.

21 Q Can you tell me when that visit took place?

22 A Yes. That visit took place on Friday,  
23 February 7th.

00118

1 A Yes.

2 Q What?

3 A He said, "It's a great space; but more

4 important, it's a great location, and I want

5 you to be here."

6 Q Well, what happened next in respect of your

7 hour and-a-half visit on February 7, 2003?

8 A We walked around into the other rooms, and

9 Laurie repeated that I should buy the

10 apartment, and then I think we had gone back

11 into the living room, and I said, "It's going

12 to be too expensive." And he said, "Let's go

13 in the other room and talk." We went into

14 the bedroom.

15 Q Which one?

16 A The south-facing bedroom. We sat on the --

17 the radiator cover or something, and he said,

18 "This is absolutely doable." And I said,

19 "Look, --." At that point, I was talking

20 to -- we were like 1.275, or maybe we were --

21 maybe we had the price down right. So the

22 building required a 50 percent downpayment,

23 50 percent cash, and I said, "Look, if I take

00119

1 all the money from all the cash that I'll get  
2 out of the sale of 87th Street, that's all  
3 the money." And he said, "Well, yeah.  
4 That's all right. I'll pay for the  
5 renovations. You put the cash in on the 50  
6 percent down, and you get the mortgage. I'll  
7 do the renovation, and I'll pay the  
8 maintenance. It's doable." And he said,  
9 "That's what I want you to do."

10 Q Am I correct, the apartment from your point  
11 of view, was still a wreck?

12 A Oh, yeah.

13 Q Did you have -- Well, I think you testified  
14 to several issues; leaking heat, bathroom  
15 fixtures, flooring, lighting, ceiling issues,  
16 etcetera. Did you have any understanding, in  
17 your mind, as to what it was going to take in  
18 terms of money to get the place in a  
19 condition that you would find acceptable?

20 A At that point, Judith Durham said, "I think  
21 you're looking at \$300,000. Plus, you have  
22 to replace the windows by contract; and you,  
23 obviously, have to replace the heating

00122

1 discussion, I think you said, sitting on the

2 radiator cover?

3 A So we went back into the living room, and

4 Judith Durham was there, and I said, "Well, I

5 think we're going to make an offer." And she

6 said, "Okay." And I don't know if someone

7 else had made an offer. Somehow or another,

8 someone was either about to make an offer or

9 had. So I offered to pay \$1.3 million. So

10 Judy called the broker and was told that

11 someone --

12 Q She called the selling broker?

13 A Right.

14 Q The seller's letters broker?

15 A Yes. Correct. And was told that someone

16 else had offered \$1.3 million, and I think it

17 had been accepted, actually, and Judy said,

18 "You know, you can always bid more." And I

19 said, "Forget it. That's it." And Laurie

20 said, "No, no, no. You should increase the

21 bid." And I said -- and I said, "No. You

22 know, we said 1.3. That's it." And he said

23 to Judy, "How much -- What do you think we



00123

1 should counter with if we're going to?" And  
2 she said, "Why don't you try 1.4?" And I  
3 said, "No. This is crazy. I don't -- We  
4 can't get into a bidding war over an  
5 apartment." And Laurie said, "Don't be  
6 crazy. Another \$100,000 or \$200,000 is  
7 trivial and the amount of money that is in  
8 this deal." So I said, "Okay." So she  
9 called up and offered 1.4, and I think the  
10 seller's broker said that they should go back  
11 to the other people.

12 The other people offered 1.4, and I  
13 don't know how this actually got aborted  
14 because the -- What happened? I think the  
15 seller's broker said something like, "Well,  
16 if you want to make an offer of 1.4, go  
17 ahead." So Laurie said, "Do it." And he  
18 said, "How can we do that?" And so Judy  
19 tried to call the lawyer who represented me  
20 on the 87th Street transaction, and she was  
21 told that he was sick or something, and she  
22 suggested a different lawyer that we used,  
23 and Laurie said, "We're going. Let's go."

00124

1 And he wasn't available until later in the  
2 afternoon on Friday, and so I think we met  
3 him at 4:00 o'clock or something; and when we  
4 got there, I think he said that -- I don't  
5 know how this works. Somehow or another, he  
6 called the attorney who was representing the  
7 seller who said that we could make an offer,  
8 and they had another offer, another -- I  
9 don't know if they had a signed contract or  
10 something. Anyway, the other people had  
11 submitted a contract and that he wanted, on  
12 behalf of his client, to interview both  
13 people who wanted to buy this apartment, and  
14 he wanted to do that on Monday morning.

15 Q That would be February 10th?

16 A Right.

17 Q Correct?

18 A Yeah.

19 Q So everything you've just testified to, if I  
20 understand correctly, took place on Friday  
21 the 7th of 2003, right?

22 A Right.

23 Q And you mentioned an initial offer of 1.3

00125

1 million and a subsequent offer of 1.4

2 million, is that correct?

3 A (Nods head)

4 MS. JERRETT: You have to say yes or

5 no.

6 A Yes.

7 Q Were either/or both of those offers

8 communicated, you know, in writing in any

9 way, or was this purely verbal by telephone?

10 A Telephone.

11 Q And were you utilized -- If I understood

12 correctly, and you can correct me if I

13 misunderstood, that Ms. Durham was the

14 intermediary who was conveying that

15 information to the seller's broker, is that

16 correct?

17 A Yes.

18 Q Did you ever, personally, during the course

19 of that day speak to the seller's broker?

20 A No.

21 Q And, to your knowledge, did Professor

22 Bogorad, during the course of that day, ever

23 speak to the seller's broker?

00127

1 offer." Frankly, I don't remember. I don't  
2 remember.

3 Q Am I correct that it was contemplated in your  
4 mind on that day that if you purchased this  
5 apartment, you would be the purchaser?

6 A Yes.

7 Q Was there ever any discussion on that day or  
8 afterwards about purchasing the apartment  
9 jointly in your name and Professor Bogorad's?

10 A Never.

11 Q You mentioned you went at 4:00 o'clock that  
12 afternoon to meet with some lawyer, correct?

13 A Uh-huh.

14 Q Do you remember his name?

15 A Alan Kroll.

16 Q And how did -- And Mr. Kroll was not the  
17 lawyer who you had used for the prior  
18 transaction?

19 A Correct.

20 Q How did you happen to get hooked up with Mr.  
21 Kroll?

22 A He had -- Judith Durham had done business  
23 with him. She said he was good.

00140

1 wanted to figure out which of the two  
2 prospective buyers was more likely to pass  
3 the Board.

4 Q And you're referring in that instance to the  
5 Board of the co-op, correct?

6 A Yeah.

7 Q Was there any discussion -- Well, first of  
8 all, did Mr. Brog say to you, in words or  
9 substance, anything at all about the other  
10 prospective buyers?

11 A No, nothing.

12 Q Nothing at all?

13 A No.

14 Q Do you know if the other prospective buyers  
15 were individual, a couple?

16 A I have no idea.

17 Q Was there any discussion between you and Mr.  
18 Brog concerning your finances or the  
19 financing of the purchase of the apartment?

20 A No.

21 Q Did any money ever come up as a topic?

22 A No, but I had -- What had I done? I had --

23 Oh, God. I think I had -- I had made a list

00141

1 of accounts I had that I brought, I think. I

2 think I -- But we didn't talk about finance.

3 We just chatted.

4 Q Did you give him that list?

5 A Yeah.

6 Q And you said accounts. Are you talking like

7 banks, securities, things of that nature?

8 A Right.

9 Q Did you have any discussion with Mr. Brog

10 concerning, you know, the 1050 Fifth Avenue

11 co-op or its Board or anything along those

12 lines?

13 A No. He told me that he had been Mr.

14 Maricca's lawyer for 20 years; that was the

15 seller; 20 or more or something like that;

16 context kind of thing. M-A-R-I-C-C-A. That

17 was the seller.

18 Q Have you told us everything you can recall

19 about your meeting with Mr. Brog?

20 A Yeah.

21 Q What happened next after that meeting in

22 respect of Apartment 15B?

23 A In the afternoon, I think it must -- I don't

00142

1 know if it was Alan Kroll or Judith Durham.

2 Somebody called and said, "Mr. Brog

3 recommended to the Mariccas that they accept

4 your offer, and they're going to sign the

5 contract this afternoon."

6 Q And at some point, did you learn that the

7 sellers had, in fact, signed the proposed

8 contract?

9 A Yes.

10 Q And when did you learn that?

11 A I don't remember. Probably -- Maybe that

12 day. I don't remember.

13 Q Was it a short period of time, that is to

14 say, a day or so?

15 A I think.

16 Q Or was it an extended period?

17 A No.

18 Q When you met with Mr. Brog, did Professor

19 Bogorad's name come up at all in your

20 conversation?

21 A I don't think so.

22 Q So you think it was the afternoon of the

23 10th, right, when you learned or you were

00143

1 informed that --

2 A I think so.

3 Q -- the sellers were going to accept your

4 offer and sign the contract, right?

5 A Right. Yep.

6 Q Did you notify Professor Bogorad?

7 A Oh, yeah.

8 Q How did you do that?

9 A I called him up.

10 Q And what did you say?

11 A I said, "Mr. Brog apparently has told Mr.

12 Maricca that he should sell the apartment to

13 me." And he said, "I knew that would

14 happen." He said, "I told you that all

15 weekend." He thought it was hilarious.

16 Q His prediction having been borne out, was

17 there any further discussion between the two

18 of you that day about 15-B?

19 A I either then or that night -- I don't know

20 when, I said I was kind of in a panic about

21 the finances, and he said, "You know, you're

22 being ridiculous. Everything is going to

23 work. It's not a problem."



00144

1 Q Did he say anymore detail or just that

2 general statement of --

3 A He said, "You're going to have the cash. You

4 get the mortgage, and I'm going to pay for

5 the renovations and the maintenance." And,

6 in fact, the mortgage was -- Was it less?

7 The mortgage was not significantly more. It

8 might have been less than what I was paying

9 at 87th Street.

10 Q It's fair to say then that from a financial

11 perspective, the mortgage was not the issue

12 that caused you any concern?

13 A No.

14 Q It was the other costs, correct?

15 A It was the renovation.

16 Q And at that point, did you finetune any

17 further what the renovations were likely to

18 cost, or were you still in the same mindset

19 as you were the previous Friday, that is to

20 say, 300,000 plus something?

21 A Right.

22 Q Still the same?

23 A Yeah.

00150

1 A I don't know. In the '90s somewhere. He  
2 started talking to somebody in Chicago.

3 Q Was that a regular topic of conversation?

4 A No. No. Sometimes he would say he was  
5 talking to the guy in Chicago wanted him to  
6 get organized, and it's such a pain. I would  
7 say, "Oh, yeah." I wasn't -- I don't --

8 Occasionally, he would have had a phone call  
9 from the guy in Chicago whoever that was.

10 Q Did you have any further conversations with  
11 him about his estate plan insofar as it was  
12 intended to or might provide some benefit to  
13 you?

14 A No.

15 Q Did you, at some point in time, learn that he  
16 had, in fact, made a provision for you,  
17 financially, under his estate plan?

18 A Yep.

19 Q When did you learn that?

20 A It was -- It was whenever he had called Len  
21 and Kiki, whatever that day was, in December  
22 of 2002 just before we went on vacation.

23 Q And you said -- I'm sorry. He called Len and

00151

1 Kiki?

2 A Yes. That's what he told me.

3 Q As best you can recall, what did he tell you

4 in the December 2002 time frame about what he

5 had done in respect of his estate plan for

6 your benefit?

7 A He said, "I finally got organized and got the

8 documents from the lawyer to do what I told

9 you I wanted to do." And he said, "I sent

10 Kiki and Len something that they have to

11 sign," I think, and he said, "I called them

12 up and told them." And I said, "Oh, what did

13 they say?" And he said, "That's fine."

14 Q Did you, at some point either then or

15 subsequently, ever see the actual

16 documentation that made provision for you

17 under Professor Bogorad's estate plan?

18 A Yeah. I think he -- I think he showed me the

19 document. I think it's just a piece or two

20 of paper.

21 Q Do you recall when he showed it to you?

22 A No.

23 Q Was it at or about that time frame, that is

00152

1 to say, December of 2002 or some other time

2 frame?

3 A I don't remember. What I remember is just

4 him saying that he had called Len and Kiki

5 and my asking, "What did they say?"

6 Q Was there any discussion between the two of

7 you, in about December of 2002, as to the

8 estimated or projected financial value of

9 that provision he made for you?

10 A No. I had no idea.

11 Q Your understanding was, though, that it was

12 more or less about one-sixth of whatever his

13 estate was, correct?

14 A Right.

15 Q And at some point, he showed you a copy,

16 correct?

17 A Yeah.

18 Q Do you recall the circumstances under which

19 he showed you a copy?

20 A No, I don't.

21 Q Do you recall where you were?

22 A It was no big ceremony, whatever it was; and

23 somehow -- somehow I seem to -- I think it

00167

1 Q At some point, did you finetune any further  
2 what it was going to cost to get 15-B in  
3 shape?

4 A Uh-huh.

5 Q And over what period of time did you get a  
6 handle on that?

7 A Between March, we made our first shopping --  
8 looking -- our first research trip on this  
9 was in February; and so in the spring, at  
10 various times, I called various contractors,  
11 people had recommended, friends of mine, to  
12 come and have a look at the apartment and  
13 give some estimate about what it would cost.

14 Q Am I correct that there were basically --  
15 and, again, I'm just trying to shortcircuit  
16 some things that I don't think are  
17 controversial, but I may be wrong, but there  
18 were basically two aspects of renovations;  
19 the first was the windows and the heating  
20 system --

21 A Yes.

22 Q -- which was basically you were committed to  
23 do as part of the purchase; and then the

00168

1 second piece was whatever else you wanted to

2 do, is that fair?

3 A The windows had to be replaced. That was by

4 contract. And the heating was essentially

5 non-functional, and so we were going to do

6 that, and there was -- there was no choice in

7 either the windows. There were two approved

8 window vendors and no discretion about the

9 heating things because of the size of the

10 things for the wall. So we decided that we

11 would do that on our own and not pay extra

12 money to a contractor when we figured, you

13 know, we could pick up the phone and order

14 the things as well as anybody.

15 Q And do you recall what the ultimate price was

16 for the window replacements, approximately?

17 A Wait. God. 18, maybe.

18 Q Thousand?

19 A Yes.

20 Q And --

21 A I'm not exactly sure of that.

22 Q And that was mandatory by contract as part of

23 the purchase, correct?

00169

1 A Yes.

2 Q And then the heating, that was not mandatory

3 by contract, but it needed to be done so you

4 didn't freeze, is that right?

5 A Yes.

6 Q Approximately how much was the heating?

7 A That, I think, was maybe around -- I think it

8 was 14.

9 Q \$14,000?

10 A Yes.

11 Q Okay. And then the third aspect of the

12 renovations, would it be fair to say, what we

13 would call discretionary?

14 A Yeah. You would call it discretionary.

15 Q It was not required in order to live there,

16 but it was something that you wanted to do in

17 order to live there in the way you wanted to

18 live there, is that fair?

19 A Yes.

20 Q And how much did that third aspect end up

21 costing?

22 A Oh, I don't know. I think -- We have

23 those -- I think we have -- I think -- I

00177

1 A Yes.

2 Q And do you see in the second line, it says,

3 "Names and Relationship of proposed occupants

4 of the Apartment and ages of children, if

5 any, and schools attending."; do you see

6 that?

7 A Yes.

8 Q And your name is typed in after that?

9 A That's correct.

10 Q There's no reference to Professor Bogorad

11 there, correct?

12 A That's correct.

13 Q Why not?

14 A Because we -- We were advised that since we

15 weren't married, putting Laurie's name on was

16 not -- was not a smart thing to do because

17 people on the Board, somebody might say,

18 "Well, these people aren't married." So I

19 didn't, and the apartment was -- he was not

20 to have any ownership interest in the

21 apartment. His financials were not offered

22 as securing my ability to pay in any way, so

23 we didn't do it.



00183

1 discuss the subject of the monthly  
2 maintenance fees for Apartment 15B?  
3 A I don't remember the number. More than maybe  
4 ten. It was in the context of my saying,  
5 "This is very expensive," when he would be  
6 explaining to me that it was doable and,  
7 "Here's how it's going to work."

8 Q Was there ever any discussion between you and  
9 Professor Bogorad on the subject of  
10 maintenance fees for Apartment 15B or what  
11 would happen in the event of his death?

12 A No.

13 Q Was there any discussion between the two of  
14 you as to what period of time he would  
15 undertake to pay the monthly maintenance  
16 fees?

17 A It was never limited. We never talked about  
18 any limitation.

19 Q Was it indefinite?

20 A Yeah.

21 Q Was there ever any discussion between the two  
22 of you as to the payment of monthly  
23 maintenance fees if for some reason you two

00184

1 were no longer a couple?

2 A No.

3 Q Did you give any thought or contemplation to

4 what would happen in terms of payment of

5 maintenance fees if, for any reason, the two

6 of you were no longer a couple?

7 A No.

8 Q Did you give any contemplation or thought as

9 to what would happen in respect of the

10 maintenance fees if he were to die?

11 A No.

12 Q Was there any discussion between the two of

13 you as to what would happen if, for some

14 reason, you were to die?

15 A No.

16 Q Was there any contemplation or expectation on

17 your part as to what would happen to the

18 maintenance fees if you were to die?

19 A No.

20 Q Was there any discussion between the two of

21 you as to what would happen in terms of

22 occupancy of the apartment if, for some

23 reason, you were to die?

00185

1 A No.

2 Q Was there any contemplation or expectation on

3 your part as to what would happen in terms of

4 occupancy of the apartment if, for some

5 reason, you were to die?

6 A No.

7 Q Was there ever any document, by that, I mean

8 writing, typed, printed, electronic, any

9 document at all that memorialized Professor

10 Bogorad's undertaking to pay the maintenance

11 fees for Apartment 15B?

12 A The checks that he wrote to me in the amounts

13 of the maintenance.

14 Q Is there any other documentation, other than

15 the checks he actually wrote during his life,

16 that memorialized any commitment or

17 undertaking on his part to continue to pay or

18 reimburse you for the monthly maintenance

19 fees for Apartment 15B?

20 A No.

21 Q Did you provide anything or make any promises

22 to Professor Bogorad in exchange for his

23 commitment to pay the maintenance fees on

00190

1 Q So you had a little bigger mortgage on 15-B

2 than you had on 87th Street, correct?

3 A Yes.

4 Q What's your monthly payment on your mortgage?

5 A It's about \$3,700.

6 Q So a little less than what you were paying

7 for the old 87th Street mortgage, correct?

8 A Right.

9 Q Now, we talked -- We've talked in different

10 context about the various categories of

11 renovations to Apartment 15B and your

12 estimate of the cost of those. When did the

13 subject of payment for the renovations first

14 come up between you and Professor Bogorad?

15 A In November of 2002 when I first told him I

16 had seen this place and it was a wreck.

17 Q Is my memory correct, at that point, you

18 really didn't have a figure in mind as to

19 what it was going to cost, correct?

20 A No.

21 Q And you started to get figures in February,

22 correct, when the two of you visited 15-B

23 together, correct?

00201

1 bottom left where it says, "Agreed and  
2 accepted by," is that your signature?

3 A Yes.

4 Q And would you take a look at Exhibit 10 which  
5 appears to be -- these are documents you  
6 produced, so I am, obviously, relying on what  
7 they purport to be. They appear to be a  
8 series of invoices from Heather Aman to you  
9 dated November 3, 2003 in the amount of  
10 \$6,000; November 24, 2003 in the amount of  
11 \$7,500; January 30, 2004 in the amount of  
12 \$7,500; May 17, 2004 in the amount of  
13 \$8,012.44; and August 2, 2004 in the amount  
14 of \$6,241.32. Do you see those?

15 (Indicating)

16 A Uh-huh.

17 Q Are those, in fact, the invoices which you  
18 did receive from Heather Aman?

19 A Yeah.

20 Q Do you know whether all of them were paid?

21 A Yes.

22 Q Let's -- I'd like to look at the first one,  
23 the one dated November 3, 2003 for \$6,000

00202

1 which appears to be the invoice for 20  
2 percent of the contract price. Do you see  
3 that?

4 A Uh-huh.

5 Q Did you pay that bill in or about November of  
6 2003?

7 A Yeah. I don't remember when, but I would  
8 have paid it.

9 Q Do you know whether you were reimbursed by  
10 Professor Bogorad for all or any part of that  
11 bill?

12 A I think I was. I'm pretty sure I was. I  
13 must say that when Laurie died, I don't  
14 really know where we were in the accounting,  
15 and you know that better than I do because I  
16 don't have the last checks that he wrote. I  
17 mean, I don't remember if he reimbursed me  
18 for the maintenance for December. I just  
19 don't remember because he had the surgery on  
20 his leg at the end of November.

21 So the last couple of -- the last  
22 couple of months, maybe, I think he -- he  
23 would have paid it if he paid it, and I don't

00203

1 remember; and as I say, you have more

2 documentation than I do.

3 Q As you sit here today, you just don't recall

4 one way or the other, correct?

5 A Yeah.

6 Q Similarly, with the second invoice there, the

7 one dated November 24, 2003 which would

8 obviously been close to Thanksgiving of that

9 year for \$7,500, do you know whether you paid

10 that?

11 A I paid it, yes, of course.

12 Q Do you know whether you paid it before you

13 left for Mexico or the end of December or

14 after you returned?

15 A I would think I did.

16 Q Do you know whether you were reimbursed for

17 all or any part of that payment?

18 A I don't remember.

19 Q You mentioned that Professor Bogorad had

20 surgery on his leg in the latter part of

21 2003?

22 A Yes.

23 Q And that was at Mass. General Hospital,

00206

1 had a bladder infection in November, and then  
2 he had this thigh thing, and the thigh was --  
3 the artery was successfully fixed. The  
4 bladder infection was something that he had  
5 had many times before. He had had bladder  
6 cancer in early '90s, and it was being  
7 treated with Cipro; and, you know, that was  
8 hanging on. It was a pain, and he was very  
9 annoyed about it. Yes. A toothache, a  
10 bladder infection and a leg.

11 Q Do you know whether, as of that time,  
12 Professor Bogorad had any, you know, chronic  
13 conditions such as, for example,  
14 cardiovascular disease or others?

15 A No. In fact, when he had -- he a quadruple  
16 bypass in November of 1997, and the surgeon  
17 gave him a 25-year guarantee on his  
18 cardiovascular chart.

19 Q There has been some discussion and some  
20 questioning from your counsel and my clients  
21 at their depositions which I know you  
22 attended concerning the change in plans for  
23 the family vacation for the year-end holidays



00213

1 A Right.

2 Q And the decision was made not to answer that

3 question fully, correct?

4 A Right.

5 Q At some point, did you go for an interview

6 with the Co-Op Board or some subset of it?

7 A Yes, I did.

8 Q And do you recall when that took place?

9 A Yes. That took place about -- just about a

10 week before we closed. So it would be June

11 something, early June of 2003.

12 Q About how long did that last?

13 A Half an hour.

14 Q Do you recall where it took place?

15 A Yes. It took place on 86th Street in some

16 institutional building next to the building

17 in which I lived, and it was called the

18 something or other club.

19 Q Did you go alone or with anybody?

20 A I went alone.

21 Q How many of the co-op folks were there?

22 A I don't remember. I don't know. Eight,

23 maybe.

00216

1     nights a week?

2   A    Yeah.

3   Q    And why is it that you believe she knew that,

4     that is to say, did you tell her; were you

5     part of some conversation or how?

6   A    She knew that Laurie and I were a couple in

7     1999 when I bought the apartment on 87th

8     Street because Laurie came to see it with her

9     and with me.

10  Q    We talked a little bit about Ms. Aman. How

11     did you get in contact with Ms. Aman?

12  A    Through Raynor Warner.

13  Q    Mr. Warner is an architect here in

14     Massachusetts, correct?

15  A    Correct.

16  Q    Who was also, I think, a social friend of

17     Professor Bogorad, is that correct?

18  A    Yes. Yeah.

19  Q    They were friends, and they also had done

20     business together over the years, is that

21     correct?

22  A    Yes.

23  Q    At least that was your understanding. Let me

00218

1 Q And did you go see her, or did she come see

2 you?

3 A Yeah. She came to see me.

4 Q All right. And, ultimately, you decided to

5 hire her, correct?

6 A Right.

7 Q And the business relationship with Ms. Aman

8 is strictly between you and her, correct?

9 MS. JERRETT: Objection.

10 A She and Laurie talked a lot when Laurie was

11 alive.

12 Q Can you take a look back. I think it's

13 Exhibit No. 9, I think. It should be right

14 there. Just so we're clear, that's the

15 contract between you and Ms. Aman dated as of

16 July 25th, 2003, correct?

17 A Yep.

18 Q And that contract is strictly between you and

19 she; there's nobody else referred to in it,

20 correct?

21 A That's correct.

22 Q And all of the payments to Ms. Aman were made

23 by you, correct?

00221

1 reimbursement, I would tell him what it was  
2 to the penny.

3 Q And he paid to the penny, correct?

4 A Yeah.

5 Q Turning to the next page, Page 9, and the  
6 bottom Check No. 6580, it looks like it's  
7 dated the 18th of August 2003 from Professor  
8 Bogorad to you in the amount of \$4,242. Do  
9 you see that?

10 A Yes.

11 Q Do you know what that's for?

12 A No. I don't know.

13 Q Any explanation for a payment from him to you  
14 in that amount in that August 2003 time  
15 frame?

16 A I don't know. I don't know. Does it jive  
17 with any -- I don't know what it is.

18 Q You mentioned Mr. Warner earlier. Professor  
19 Bogorad paid Mr. Warner directly as opposed  
20 to reimbursing him, correct?

21 A Right.

22 Q And that's the top check on Page 9 --

23 A Right.

00225

1 2003?

2 A Not specifically.

3 Q And do you have any understanding of what --

4 Do you see there's a notation there? It says

5 4625 plus 1818?

6 A Right.

7 Q Does that help at all?

8 A Nope. Again, it's some sort of mix of

9 windows, heater, Heather Aman in there. I

10 just don't know.

11 Q Just so I don't have to ask the same

12 questions repetitively, did you, at any time,

13 declare any of the moneys you received from

14 Professor Bogorad as income on your income

15 tax returns?

16 A No.

17 Q Did you have a standard practice, in the 2003

18 time frame when you received a check from

19 Professor Bogorad, as to what you did with

20 it, that is to say, you know, where you

21 endorsed it and processed it?

22 A Yeah. I would process checks through Chase.

23 Q Chase Bank?

00233

1 Kenna, Esq., from Matthew A. Berlin.)

2 Q Exhibit 15 appears to be a letter from Mr.

3 Berlin, counsel to the estate, to Mr. Kenna,

4 your lawyer, one of your lawyers, dated

5 February 11, 2004. Did you receive a copy of

6 that? (Indicating)

7 A Yes.

8 Q And did you receive a copy of it, you know,

9 shortly after the date it bears, that is to

10 say, sometime in about the middle of February

11 2004?

12 A Probably. Yeah.

13 Q In between the time you spoke with Kiki at

14 the airport and February 11, 2004, did you

15 also have a discussion with Kiki's brother,

16 Len, regarding these matters?

17 A Yes, I did.

18 Q And approximately when did that discussion

19 take place?

20 A There were two discussions.

21 Q All right. When was the first one?

22 A January 2nd.

23 Q And how did that discussion take place, that

00234

1 is to say, in person, by telephone?

2 A In person.

3 Q And where were you and Len at that time?

4 A In Lexington in Laurie's office in his home  
5 study.

6 Q Was anyone else present, or was it just you  
7 and Len?

8 A James Gross.

9 Q And what, to the best of your memory,  
10 transpired during that discussion, that is to  
11 say, what did you say to them, and what did  
12 either Mr. Gross or Len Bogorad say to you?

13 A They had come over to have me help them find  
14 and sort through Laurie's financial  
15 documents, and so I knew that there was --  
16 his stuff was in the files, and I was pulling  
17 all the stuff out of the files, and they were  
18 trying to figure out where his accounts were,  
19 trying to figure out what the total was of  
20 how much money he had, and I said -- the two  
21 of them were sitting in the room, and I said,  
22 "Laurie and I had an agreement that he was  
23 going to pay for the renovations on the

00235

1 apartment up to \$400,000, and he also paid  
2 the maintenance on the apartment both at 87th  
3 Street and at Fifth Avenue." And Len said,  
4 "Do you have that in writing?" And I said,  
5 "No." And I don't remember what else was  
6 said, but I said that Laurie's credit cards  
7 were -- I had put them in the drawer in the  
8 bedroom in the bureau, and I said, "I think  
9 you should take those." And Len and I went  
10 in the bedroom, and Len said, "How much was  
11 the maintenance? How much is the  
12 maintenance?" And I said, "It's about 1,850.  
13 I don't know exactly what it is." And he  
14 said, "Oh."

15 Q He said?

16 A "Oh."

17 Q Have you told us everything you can recall  
18 about that discussion with Len and with Jim  
19 Gross?

20 A Yeah.

21 Q I think you said you had a second discussion  
22 with Len?

23 A Yes.



00241

1 Q. Mr. Bogorad, do you know if you communicated  
2 what you proposed in that portion of the e-mail  
3 to Ms. Mullinix?

4 A. I don't recall having done that, no.

5 Q. Was this e-mail sent from your work?

6 A. Yes.

7 Q. Did you engage in trying to ascertain whether  
8 there was any follow-up communications from you  
9 to Ms. Mullinix around this time period relating  
10 to what you proposed to tell her?

11 A. There wasn't anything else in your system to  
12 Ms. Mullinix.

13 Q. And what was the process you used to identify  
14 e-mails in your system at work?

15 A. I searched the archived folders and the regular  
16 folders in the box, sent and so on, for anything  
17 that involved the parties to this. And then I  
18 -- I can't remember what the date was that I  
19 found the folders and that I asked our IT guy  
20 whether there was anything that I wouldn't be  
21 finding through those searches, and he said,  
22 "no, that's all that we have."

23 Q. Do you know what that date was?

24 A. I don't know, no.

00242

1 Q. Is it your understanding -- is it your -- do you  
2 believe that you had a conversation with  
3 Ms. Mullinix sometime on or after March 11th of  
4 2004, related to the substance of this e-mail

5 A. I don't recall any, now.

6 Q. Do you recall sending an e-mail on or after  
7 March 11, 2004, relating to this substance?

8 A. I don't, no.

9 Q. Do you think you didn't get back to Ms. Mullinix  
10 at all about her questions?

11 A. Kiki was the one who was generally talking to  
12 her the most, so I sort of assumed that she was  
13 dealing with that. (Witness is reading from  
14 document.) They were talking about forwarding  
15 mail, reading Kathy's e-mail, she was sharing  
16 thoughts, it seemed consistent with what we were  
17 talking about. You know, as I said in my e-mail  
18 that it looked like that should match up pretty  
19 well.

20 She expressed, "Hopefully this won't  
21 interfere with things." There wasn't really a  
22 question when it comes down to it. You know,  
23 normally I do respond to e-mails and, as I said,  
24 I was, you know, proposing to Kiki that maybe

00244

1 A Yes, it did.

2 Q And that was, from a financial point of view,

3 that was the largest of the

4 renovation-related contracts, correct?

5 A Yes, it was.

6 Q How long did you consider -- Withdraw that

7 one.

8 How long did you continue to reside in

9 the Lexington house?

10 A Until June 10th, 2004.

11 Q From the year end time frame of 2003,

12 beginning of 2004 until June 10, 2004 did you

13 pay any rent or occupancy charges for living

14 in Lexington?

15 A No.

16 Q Obviously, the house had certain utility

17 bills, etcetera, during that period of time.

18 Who paid them?

19 A The estate.

20 Q Was there a working telephone in the house?

21 A Yes.

22 Q Who paid the phone bill?

23 A The estate.

00245

1 Q Did you make any payments in respect of the  
2 occupancy or upkeep of the Lexington house  
3 during the time that you lived there?

4 A No, I don't think so.

5 MR. VARN: Mark this as the next  
6 exhibit, Exhibit 16.

7 (Whereupon the Stenographer marked as  
8 Exhibit No. 16 - E-Mail - 3/11/04 to  
9 kikibg@hotmail.com from Kathleen Mullinix.)

10 Q Ms. Mullinix, would you take a look, please,  
11 at Exhibit 16 and ignore for the moment the  
12 fact that Ms. Solfanelli's name is on the top  
13 which we've established here means that this,  
14 at some point, was forwarded to her, and she  
15 printed it out from her computer.

16 (Indicating)

17 A Right.

18 Q Is the rest of that an e-mail which you sent  
19 to Professor Bogorad's daughter and son, Kiki  
20 and Len, on or about March 11, 2004?

21 A Yes.

22 MR. VARN: What's the next exhibit,  
23 17? Mark this as Exhibit No. 17.

# **EXHIBIT B**

## **(1 OF 2)**

00001

1 Volume: I  
2 Pages: 254  
3 Exhibits: 1-15

4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF MASSACHUSETTS  
6 CIVIL ACTION No. 04-12684-WGY  
7

8 -----X  
9 KATHLEEN P. MULLINIX,  
10 Plaintiff,  
11 Vs.

12 KIKI BOGORAD-GROSS and LEONARD P.  
13 BOGORAD, as They are Executors  
14 of the Will of Lawrence Bogorad,  
15 Defendants.  
16 -----X

17 DEPOSITION of: LEONARD P. BOGORAD  
18 Date: Thursday, January 19, 2006  
19 Time: 10:00 a.m.  
20 Location: Choate, Hall & Stewart, LLP  
21 Two International Place  
22 Boston, MA 02110  
23

24 --- REPORTER: Evelyn M. Slicius, CSR, RPR ---

21

22 K. L. GOOD & ASSOCIATES  
23 Registered Professional Reporters  
24 P.O. BOX 367  
Swampscott, Massachusetts 01907  
Tel. 781-598-6405 \* Fax. 781-598-0815

00013

1 Q. And she is still alive; is that correct?

2 A. She is.

3 Q. And your sister that you referenced, is that

4 Kiki Bogorad-Gross?

5 A. Yes.

6 Q. And is that the woman who is sitting two people

7 down from you today?

8 A. Yes, it is.

9 Q. Other than Kiki Bogorad-Gross, do you have any

10 other siblings?

11 A. No.

12 Q. How long were your parents married?

13 A. I think they got married in 1943, if I remember

14 correctly.

15 Q. And did they continuously live together until

16 your father's death?

17 A. My mother came down with Alzheimer's, obviously

18 it's a gradual sort of thing, and she ended up

19 in an assisted-living facility first of all, and

20 then moved into a nursing home.

21 Q. Do you remember when your mother was diagnosed

22 with Alzheimer's?

23 A. I don't know specifically, no.

24 Q. Do you have a general idea?

00014

1 A. As you know, it is not exactly a clear science.

2 There were certainly signs that her memory  
3 wasn't as good at various times. I think we got  
4 the sense that she was coming down with it  
5 probably before there was any formal diagnosis.  
6 I can't even say that I know of any formal  
7 diagnosis.

8 But, let's see, I would think in the  
9 -- probably in the early 1990's she was probably  
10 showing some signs of it, and I don't really  
11 remember when we first had her moved to the  
12 assisted living.

13 Before that she was involved in some  
14 daycare for a year or two, I believe, but I  
15 really don't remember the exact dates.

16 Q. Just so I'm clear on the chronology, is it your  
17 testimony that your mother had been showing  
18 signs of what you presume was later diagnosed as  
19 Alzheimer's, she had a period of a year or two,  
20 roughly, where she was involved in some sort of  
21 daycare program, and then moved to an assisted  
22 living facility, and from there moved into a  
23 nursing facility?

24 A. That's correct. I guess the only clarification



00022

1 Certainly, when we were getting closer  
2 to the times when we were taking the Christmas  
3 trips we would be focusing on the logistics and  
4 ideas of some things for those trips.  
5 Occasionally health things would come up, but as  
6 I said, he tended to be circumspect about that.  
7 And certainly how my mother was doing.

8 Q. Do you remember if your father regularly visited  
9 your mother?

10 A. My understanding is it was very frequent, yes.

11 Q. Did he provide details to you during your  
12 conversations with him about your mother's  
13 progress or prognosis?

14 A. Yes. Although, I would say, as it became more  
15 and more constant and not very positive, we  
16 tended to not talk about it nearly as much as we  
17 would have earlier.

18 But I guess the answer would have  
19 been, "She's the same" and "She doesn't  
20 recognize me any more," that kind of thing;  
21 obviously, not a fun topic.

22 Q. Your father was saying that your mother did not  
23 recognize him any longer?

24 A. That is what he would have had to say. The

00035

1 She is a woman that my father was very fond of.

2 She lives in New York; she is a biologist, a

3 former chief executive of a biotech firm. I

4 don't know what else you are expecting.

5 Q. Do you recall when you first heard about

6 Kathleen Mullinix?

7 A. I'm not absolutely sure, but I believe it was

8 shortly after my father had bypass surgery,

9 which would be in the late '90s, I guess.

10 Q. Is this the bypass surgery you referenced

11 earlier that was somewhere around 1997?

12 A. Yes. I believe the bypass surgery was at the

13 end of 1997. And I believe I first learned of

14 Kathy's existence and their friendship in the

15 early part of '98, if I have those dates

16 correct.

17 Q. And at the time that you first learned about

18 Ms. Mullinix's existence, what was your

19 understanding as to who she was?

20 MR. VARN: Objection as to form. You

21 can go ahead and answer.

22 Q. Do you understand my question?

23 A. I think so. Unfortunately, I don't remember

24 the details of how I learned or exactly what I

00036

1 learned when or how.

2 But my general sense was that she  
3 was someone with whom my father was having a  
4 romantic relationship with, presumably with my  
5 mother in not a very good mental state; but  
6 there was the assumption at the time that he  
7 had moved on to another active relationship  
8 because my mother had Alzheimer's and was  
9 really not all that much of a spouse anymore  
10 in that respect, I guess.

11 Q. At some point did that understanding change?

12 A. In terms of the issue of whether it was a  
13 relationship that existed for a long time  
14 before that or not, I really didn't learn  
15 anything about that until after he died from  
16 Ms. Mullinix.

17 So it really was a continuation  
18 from -- certainly it was a very serious  
19 relationship that the two of them were having,  
20 and I think all the family welcomed Kathy into  
21 the fold and were very friendly toward her.

22 And we were happy that my father had  
23 someone that he loved and would be a companion  
24 because my mother wasn't certainly able to --

00037

1     sadly -- she was not able to serve that role

2     anymore.

3    Q.   Who first told you about Kathleen Mullinix?

4    A.   I don't remember.

5    Q.   Do you recall if it was your father who first

6     mentioned her?

7    A.   I don't know.

8    Q.   Can you provide me any more details about the

9     nature of you first learning about Kathleen

10    Mullinix?

11   A.   No, I really don't recall any more specifics,

12    I'm afraid.

13   Q.   Did you hear about Ms. Mullinix before you met

14    her?

15   A.   I'm pretty sure I did.

16   Q.   Do you have any estimate as to the time between

17    you hearing about Ms. Mullinix and the time that

18    you met her?

19   A.   I don't. I don't even remember exactly when I

20    first met her. It may have been -- no, I don't

21    remember. It was, I believe, in the context

22    of the time when he had a mental breakdown,

23    basically, a few months after his surgery.

24           And I went to New York, along with my

00044

1 A. Not in terms of anything like, "I have this  
2 girlfriend" or anything like that. My best  
3 recollection is that I already knew that there  
4 was this relationship by the time I talked to  
5 him, is my best recollection, and so it was just  
6 a given.

7 And as I said, we were very happy that  
8 he had a nice relationship at that point. But  
9 we didn't talk about romantic or emotional  
10 things much at all at any time in our lives, and  
11 so I don't believe we did at that point either.

12 Q. Did you ask your father questions about her?

13 A. No.

14 Q. You had a sense that he was in, I believe you  
15 said, "a nice relationship." Where did you get  
16 that understanding from?

17 A. I don't know. Obviously, my sister saw them or  
18 my father a lot more from living in the same  
19 city, and I probably heard reports from her.  
20 And we had just a general sense when we did see  
21 them together that they seemed to be enjoying  
22 each other.

23 Q. Did your father appear happy when he was with  
24 Kathy Mullinix?

00050

1 substance with the exception of the revised  
2 date.

3 A. Okay. I notice my name is spelled wrong, but  
4 otherwise that is fine.

5 Q. Mr. Bogorad, just so I'm clear on the record, is  
6 it your understanding that you are here pursuant  
7 to a notice of deposition today?

8 A. I don't know the legal terminology. I assume  
9 that there was some kind of notice; I don't  
10 remember whether I actually saw it or I was told  
11 by the attorney that I should be here.

12 MS. DINEEN JERRETT: Will you mark  
13 this as the next exhibit.

14 (Exhibit No. 3, Handwritten Letter  
15 from the Department of Molecular and Cellular  
16 Biology was marked for identification.)

17 MS. DINEEN JERRETT: Back on the  
18 record.

19 A. I have one other thing I can recall which might  
20 be considered financial.

21 My father called me, as I recall, it  
22 would have been before my daughter started in  
23 college, so it was probably in 2001, I guess, to  
24 indicate that he wanted to give us a gift of

00051

1 paying for \$10,000 in tuition for each year that  
2 each of our children and each year that Kiki's  
3 children was in college, for which we did  
4 appreciate it.

5 He did end up making those gifts to  
6 us. He did not end up getting around to it the  
7 year that he died, so that there was no payment  
8 for that year. But until he died, he did pay  
9 that, which was very nice of him.

10 Q. Thank you for that clarification. I do have a  
11 couple of questions about that issue.

12 You stated that this is something that  
13 you have now recalled since the time we took a  
14 break; is that correct?

15 A. I recalled it as relevant to your question, yes.  
16 I certainly remembered it before, but I wasn't  
17 connecting that with the question about  
18 financial --

19 Q. Is that something that you -- and I'll use the  
20 term "recalled" unless you have a different term  
21 that you would prefer? Is recall --

22 A. Well, just to clarify, it is probably connected,  
23 connected to your question, yes. I thought  
24 about it as an appropriate answer to your

00052

1 question.

2 Q. In thinking about it as an answer to my prior

3 question, did you come to that conclusion on

4 your own or did you talk to somebody during the

5 break about that?

6 A. No, no, just by myself.

7 Q. You indicated that this was sometime in 2001 as

8 best you can recall?

9 A. I believe that's right. My daughter graduated

10 in May of 2005, so she would have started in the

11 fall of 2001, so it was sometime, I believe,

12 sometime before she started college and probably

13 in that year prior, you know, the year that she

14 started, but I'm not absolutely sure.

15 Q. What do you recall your father saying during

16 that conversation?

17 A. Just that he wanted to give us a gift and help

18 pay -- he knew college was expensive these days

19 and wanted to help us bear that burden or

20 whatever. And he wanted to make a gift of

21 \$10,000, as I said, for each of our kids for

22 each year they were in college.

23 And, you know, obviously, we said that

24 is not necessary, you know, but he was not the



00053

1 kind of guy. He was very generous and if he  
2 wanted to give you a present, he was going to  
3 give you a present. And we were obviously happy  
4 to have it, and my daughter was very excited as  
5 well.

6 Q. Other than indicating that this was a wish that  
7 he had, did he indicate that there was another  
8 reason for wanting to provide \$10,000 every year  
9 to his grandchildren for their education?

10 A. Not that I recall, no.

11 Q. Do you recall if there was any discussion about  
12 tax consequences or tax issues related to that?

13 A. No, I'm pretty sure there wasn't.

14 Q. You are pretty sure there was not a conversation  
15 about that?

16 A. Yes.

17 Q. Other than that conversation sometime prior  
18 to -- you said it was Sarah entering college?

19 A. Correct.

20 Q. Do you recall any other instance, either prior  
21 to that or subsequent to that, where you had a  
22 conversation with your father about him making a  
23 gift of money towards his grandchildren's  
24 college education?

00054

1 A. I can't remember, you know, in subsequent years  
2 whether there was a conversation or whether he  
3 just sent a check along; we may have talked  
4 about it. I'm sure we thanked him for it when  
5 we received it.

6 Q. Did your father send a check directly to you or  
7 was it to the college? Where was the check  
8 sent?

9 A. I'm trying to remember. It got sort of  
10 confusing as to whether in some cases we had  
11 already paid the tuition. I think they sent it  
12 to us; I think there may have been one time that  
13 he wrote the check out to the college and we  
14 sent it along with our additional monies.

15 Q. Where did Sarah go to college?

16 A. Oberlin, O-b-e-r-l-i-n, Ohio.

17 Q. So if I understand your testimony, you think  
18 that there may have been at least one occasion  
19 where your father made a check payable directly  
20 to Sarah's college, but other than you that, you  
21 think he may have reimbursed you?

22 A. I don't think so but that is really my  
23 recollection.

24 Q. For the checks that came to reimburse you, do

00055

1 you know if they were made payable to you or

2 payable to your daughter?

3 A. I don't recall.

4 Q. For what years do you recall your father making

5 those gifts or payments?

6 A. Let's see -- well, he would have made it

7 definitely for the school year of '01 to '02,

8 and definitely the school year of '02 to '03.

9 And he definitely did not do it -- even though

10 I'm sure he planned to -- for the year that he

11 died of '03 to '04, he did not make a payment.

12 So there would have been two payments.

13 Q. Do you recall if your father sent the payments

14 by semester or whether he sent one payment for

15 \$10,000 prior to the school year?

16 A. I'm pretty sure it was one payment for the -- I

17 don't think it was necessarily prior, but it was

18 one per school year.

19 Q. And is it your testimony that you recall

20 receiving payments for the 2001/2002 school year

21 and the 2002/2003 school year for Sarah but not

22 for the two subsequent years?

23 A. He was deceased for the fourth year. And I

24 definitely did not receive it for the year that

00056

1 he died that she was in school.

2 Q. Did you -- for the year that Sarah was in  
3 school and your father died, for the '03/'04  
4 school year, did you have a conversation with  
5 your father about the fact that you had paid  
6 the college tuition and asked him what his  
7 intentions were with respect to his prior  
8 statements of wanting to make a gift?

9 A. No. It was a gift. I was sure he was going  
10 to pay it sooner or later and that was not  
11 something I would have raised with him.

12 Q. To your knowledge, did your father make any  
13 payments towards his other grandchildren's  
14 college education?

15 A. My understanding was that he had the same  
16 arrangement with Kiki's children, or probably  
17 just one child who was in college during that  
18 period. I have no idea whether the payments  
19 were actually made.

20 Q. Your son -- David, is it?

21 A. Yes.

22 Q. When did he enter college, if at all?

23 A. He is in his second year, so he would have  
24 entered in the fall of '04.

00057

1 Q. And that was after your father had passed away?

2 A. That is correct.

3 Q. It is probably an obvious answer, but did your

4 father make any contributions towards David's

5 college education while he was alive?

6 A. No; he said he was going to.

7 Q. Had the estate made any contributions to either

8 Sarah's or David's college educations?

9 A. No.

10 Q. To your knowledge, do you have any knowledge

11 whether the estate has made any contributions

12 towards Kiki's children's education?

13 A. No. I'd be surprised if I had, but I have no

14 knowledge of that.

15 Q. And you are a co-executor along with your sister

16 of your father's estate, correct?

17 A. Yes.

18 Q. Would it be fair to say that as a co-executor

19 you would have knowledge if the estate were

20 making payments to your children's or your

21 sister's children's college education?

22 A. Yes.

23 Q. And other than that connection that you made

24 during the break, is there any other information

00065

1 open about things like that than he was with  
2 a son of his. And, again, reminiscent of the  
3 letters that we had seen to my mother which,  
4 again, were of similar tone.

5 Q. Did you have an understanding while your father  
6 was alive that he was in love with Kathy  
7 Mullinix?

8 A. That would have been my assumption. The  
9 question is how you define that, I guess, but I  
10 would say so, yes.

11 Q. The letters that you found after your father's  
12 death between your father and your mother, do  
13 you have any recollection as to the dates of  
14 those letters?

15 A. I believe these were all before they were  
16 married, when they were living with each other.  
17 I suppose they didn't have much occasion to  
18 write letters to each other, but this would have  
19 been before they were married in the early  
20 1940's, I guess.

21 Q. We discussed a bit earlier that you became aware  
22 in, I believe you said, December of 2002 that  
23 your father wished to provide for Ms. Mullinix  
24 in his estate plan; is that correct?

00066

1 A. Correct.

2 Q. And I believe you testified that it was an

3 e-mail that you received from your father?

4 A. Correct.

5 MS. DINEEN JERRETT: And this will be

6 marked as Exhibit No. 4.

7 (Exhibit No. 4, E-mail of 12-19-02

8 from Lawrence Bogorad to Kiki Bogorad-Gross was

9 marked for identification.)

10 Q. Mr. Bogorad, if you could take a few minutes and

11 look at that and make sure you are familiar with

12 it.

13 A. Okay.

14 Q. Mr. Bogorad, let me ask you this first, do you

15 recognize what's been marked now as Exhibit 4?

16 A. Yes, I do.

17 Q. What is it?

18 A. This is the e-mail we were referring to of

19 December 19, 2002, to me and to Kiki, regarding

20 the addition of Kathy to the estate.

21 Q. And is this the e-mail that you previously

22 testified to receiving regarding your father's

23 intent to include Ms. Mullinix in his estate

24 plan?

00067

1 A. Yes.

2 Q. Do you recall if there was any other e-mail

3 related to that issue?

4 A. I don't recall any others, no.

5 Q. And after looking at this e-mail, is there

6 anything in addition to what you have previously

7 testified to about your father's wishes to

8 include Ms. Mullinix in his estate plan that

9 comes to mind?

10 A. I don't know if it relates to the question you

11 just made, but in terms of an earlier question,

12 it does refer to this Charitable Unit Remainder

13 Trust.

14 Again, it is not clear from this

15 whether he was mentioning this in passing or

16 whether I knew about it already. But I would

17 say this probably leads me to think that he had

18 us sign documents about that earlier than this

19 date.

20 Otherwise, obviously, it has a lot of

21 details about different shares and the Q-TIP

22 Trust and dealings of that sort, but honestly I

23 don't claim to really understand the different

24 parts of this.



00068

1 Q. Is this, as best you can recall, the first time  
2 that you became aware that Mr. Bogorad wanted to  
3 include Ms. Mullinix in his estate plan?

4 A. I believe it's the first time, yes.

5 Q. Prior to December 19, 2002, the date of the  
6 e-mail, do you recall having any conversation  
7 with your sister Kiki about your father's wishes  
8 to include Ms. Mullinix in his estate plan?

9 A. I don't recall any, no; it is possible though.

10 Q. Mr. Bogorad, if I could just refer you -- I'll  
11 just point to the provision, it appears to be  
12 above the name "Matthew A. Berlin," there was an  
13 indentation above that starting, "Inasmuch as  
14 you are both trustees," do you see that  
15 sentence?

16 A. Mm-hmm.

17 Q. Do you recall your father requesting you to sign  
18 a copy of a revocable trust to authorize his  
19 change to include Ms. Mullinix in his estate  
20 plan?

21 A. Well, this is the request for that here. I  
22 recall receiving this e-mail that requested  
23 that, yes.

24 Q. And do you recall providing your signature in

00069

1 response to that request?

2 A. I'm pretty sure I did; I can't say I remember

3 exactly when I did it. There's a note here, he

4 said, "it will be fine to do it after we got

5 back," meaning the trip to Southeast Asia. I

6 don't recall whether I did it before or after

7 that.

8 Q. Do you recall having any -- other than this

9 e-mail communication, do you recall having any

10 specific communication with your father about

11 his desire to include Ms. Mullinix in his estate

12 plan?

13 A. I don't recall. I'm sure I responded probably

14 by e-mail that "that sounded fine," but it is

15 possible that I said that verbally, orally. I'm

16 sure I would have responded one way or the

17 other, but I don't recall; and I didn't have any

18 records in my e-mails of a response, but my

19 e-mails aren't saved that far back in the

20 system.

21 Q. Did you engage in a search of your e-mails to

22 see if there was a response by you to this

23 e-mail?

24 A. Yes. I looked through the e-mails when the

00072

1 generally those questions and answers?

2 A. Yes.

3 Q. And I believe you testified that the family

4 welcomed Kathy into the fold. Do you recall

5 saying something along those lines?

6 A. Yes.

7 Q. Prior to your father's death, did you consider

8 Kathy Mullinix part of your family?

9 A. I have a pretty strict definition of family.

10 I guess it would be more sort of a legal,

11 sociological, whatever you want to call it,

12 definition, so I suppose not technically.

13 Q. What was your understanding prior to your

14 father's death as to whether he and Kathy

15 Mullinix were living together?

16 A. I guess I don't define it as living together

17 because he was living in Boston and she was

18 living in -- well, I guess before death -- I

19 guess once they started -- once she started

20 doing rehabilitation of the co-op that she

21 bought, I guess my understanding was that Kathy

22 was probably spending a lot of time in Lexington

23 at my father's house.

24 But before that happened, it seemed

00073

1 from what I was hearing, just in passing, and  
2 more than anything that he was spending most  
3 weekdays in Lexington, both because he was going  
4 to work and because he lived there and he wanted  
5 to be close to my mother, and that he was  
6 frequently going to New York for weekends when  
7 he wasn't traveling otherwise.

8 So, I guess, by my definition, that  
9 would not be living together, although obviously  
10 spending a fair amount of time together in  
11 different locals.

12 Q. What would your definition of living together  
13 be?

14 A. It would be having one household together, you  
15 know, that would be your legal abode, the place  
16 where you'd spend the vast majority of your  
17 time, it would be in the same place as each  
18 other, presumably changing your voter  
19 registration and your insurance and all those  
20 things that would go toward living in the same  
21 place with each other. I don't know if that's a  
22 legal definition but that would be my personal  
23 definition I suppose.

24 Q. At any point prior to your father's death, did

00074

1 you have an understanding that he and  
2 Ms. Mullinix were living together, as you  
3 define the term?

4 A. No. Again, except if you consider the fact that  
5 she probably was spending most of her time in  
6 Boston while her apartment was being renovated,  
7 after she sold her first co-op or whatever it  
8 was and bought another one.

9 I think I probably knew that her new  
10 apartment wasn't easily habitable in its form  
11 and so she needed someplace to live and I  
12 probably knew that she was spending most of the  
13 time in Lexington.

14 My assumption was that she was  
15 planning on moving back to this apartment that  
16 she was working on. And so it was more of a  
17 temporary living in Lexington, rather than she  
18 had moved formally to Lexington and that they  
19 therefor had been living together in Lexington.

20 And so I guess I would still consider her to be  
21 a resident of New York and my father of  
22 Lexington.

23 Q. You indicated that you had an assumption that  
24 Kathy Mullinix was planning to move back to New

00078

1 hand where a wedding band would normally be

2 seen?

3 A. I think I probably did. I must say, and my wife

4 would tell you, I don't notice jewelry as much

5 as I probably should.

6 Q. Do you have any information about whether your

7 father purchased jewelry for Ms. Mullinix?

8 A. I saw him going through the documents the last

9 few days, a receipt for a jewelry store in

10 Bangkok, which would have been in that trip to

11 Southeast Asia. I think it was about \$3,000 and

12 I would assume -- and he wouldn't be the type of

13 guy that would buy himself jewelry, so I guess

14 it was for Ms. Mullinix. But I don't have any

15 more evidence than that. I would certainly not

16 be surprised if he brought her jewelry, but I

17 don't have evidence of that one way or the

18 other.

19 Q. The trip to Southeast Asia, you have mentioned

20 that a couple of times, when do you recall that

21 that trip was?

22 A. That would have been just after this e-mail, so

23 that would have been at Christmastime of late

24 December 2002, or perhaps running into the first

00079

1 few days of '03.

2 Q. And who went on that trip?

3 A. That would have been my father, my sister Kiki

4 Bogorad-Gross, my brother-in-law, their two

5 children, my wife, myself, my two children, and

6 Kathy Mullinix.

7 Q. And during that trip, to your knowledge, did

8 your father purchase jewelry for any person

9 other than Ms. Mullinix?

10 A. I'm pretty sure he did not.

11 Q. Are you aware of other gifts that your father

12 purchased for Ms. Mullinix?

13 A. Not really. It certainly wouldn't surprise me.

14 It would surprise me if he didn't, since he is

15 a very generous guy and I know he loved her, but

16 I don't know of any specifics.

17 Q. Do you recall whether there was a red Saab

18 convertible that your father purchased at some

19 point?

20 A. Yes.

21 Q. Do you know when that was purchased?

22 A. I don't. It was in Ms. Mullinix's statement in

23 the documentation, so I read the date a few days

24 ago, but I don't remember what day it was.

# **EXHIBIT B**

## **(2 OF 2)**



00084

1 Q. Anybody that accompanied your father?

2 A. No.

3 Q. At some point after your father's death, you and

4 Ms. Mullinix had some conversations about her

5 claims; is that right?

6 A. Claims? I don't know about the definition of

7 "claims." We had some conversations about

8 things that turned into claims.

9 Q. And do you recall the general nature of what

10 those things were?

11 A. Yes.

12 Q. What were they?

13 A. To the best of my recollection, it was around

14 the time of the funeral in early January after

15 he died, so that would have been in 2004. And I

16 was in my father's house going through some of

17 his papers with my brother-in-law, Jim Gross,

18 and Kathy was there.

19 And my best recollection is that she

20 mentioned the fact that she had been

21 rehabilitating or was going to be rehabilitating

22 this co-op that she had bought and that my

23 father had, she said, planned to pay for the

24 renovation costs. That is my best recollection.

00086

1 respond at all?

2 A. It's my best recollection.

3 Q. Do you recall if your brother-in-law, Jim Gross,

4 said anything in response to Ms. Mullinix's

5 statements?

6 A. That would be the same recollection about him,

7 that he did not respond either. But, again,

8 that is my best recollection, I don't have a

9 perfect recollection of that.

10 Q. After this early January 2004 conversation, do

11 you recall any other conversations with

12 Ms. Mullinix about the things that have since

13 turned into claims?

14 A. Yes. She called my house, I believe it was

15 January 25th of that year, and said that she

16 wanted to talk about her co-op and about her

17 staying in the house in Lexington.

18 Q. Do you recall what she said specifically about

19 those things?

20 A. I mean, I took notes, I think quite complete

21 notes about what she said and they are in the

22 record. I can either refer to those and give

23 you verbatim, or tell you my best recollection

24 without those notes.

00087

1 Q. Do you have those notes with you today?

2 A. I think I do have a copy of you want. It's in  
3 the documents that you have already. Do you  
4 want me to pull it out?

5 MS. DINEEN JERRETT: Let's go off the  
6 record.

7 (Discussion of the record.)

8 MS. DINEEN JERRETT: Okay. Let's mark  
9 this as the next exhibit.

10 (Exhibit No. 5, Handwritten notes of  
11 1/25/04, 5 pgs., was marked for identification.)

12 Q. Mr. Bogorad, I've just handed you a document.

13 Feel free to look through it if you need to in  
14 order to refresh your recollection.

15 A. I remember it.

16 Q. Do you recognize this document?

17 A. Yes.

18 Q. What is it?

19 A. It's the document that I was referring to as  
20 notes I took while I was on the phone with Kathy  
21 Mullinix on, as it says on the top, January 25,  
22 2004, during the call that she made to me.

23 Q. Is it your testimony that any of the handwriting  
24 on these five pages is your handwriting?

00088

1 A. Yes.

2 Q. And this appears to be on either a note pad or

3 letterhead of your wife; is that correct?

4 A. That's correct. It was a note pad that happened

5 to be next to the phone.

6 Q. I'd like you, Mr. Bogorad, to go through the

7 handwriting, and read slowly so that the court

8 reporter can get it down, what is handwritten

9 there, please.

10 A. Yes, I'll try. There are a few places where I

11 can't quite honestly make out.

12 Q. That makes two of us.

13 A. The good news is I take very detailed notes when

14 I'm talking to people; the bad news is I don't

15 always, in order to refer to those, remember

16 what I said or be able to read what I said, but

17 I'll do my best.

18 It says: "House and Kathy's living

19 arrangements." And my recollection is she said

20 that those were the two topics she wanted to

21 talk about. And, obviously, she would have said

22 "my living arrangements" but --

23 MR. VARN: Wait, wait. She just asked

24 you to read the notes.

00089

1 A. Sorry. "1. The house and selling it. What  
2 plans are when standard renovation, plan to stay  
3 down here" -- I'm sorry -- "when started  
4 renovation, plan to stay down here." Which I  
5 took to mean Lexington because she was calling  
6 from Lexington. "I'd want to be here until the  
7 renovations are done. If could be sold in  
8 spring, would be great. If house sold in  
9 spring, could delay closing, later delivery,  
10 work around that, delivery" -- and then I can't  
11 read the next word. Then it says, "house for  
12 another year," and "Kathy in New York."

13 Q. Page 2.

14 A. The next page says, "talking four months,"  
15 circled, it says, "end of May, need to plan  
16 to" -- and then I must have run out of time to  
17 finish that sentence.

18 And then, "No. 2," which I take to  
19 mean that she was moving on to the next topic  
20 dealing with the renovation of the apartment,  
21 which is what it says next. "Renovation of New  
22 York apartment. Mentioned to me and to Kiki  
23 that my father and Kathy had agreement with  
24 respect to real estate in New York. Dad was

00090

1 going to pay \$400,000 out to bid on the 17th,"  
2 which I believe I took to mean January 17th.  
3 "We had entered into real estate transaction  
4 knowing that not livable and need to do gut  
5 renovation. How want to handle bills as come  
6 in," which I think the full sentence was, "How  
7 do you want to handle the bills as they come  
8 in."

9 The next page, "Talk to Jim several  
10 days after conversation with lawyer. Jim  
11 said would take some time to have named as  
12 executors," it says "couldn't if paying bills."  
13 I'll try to interpret what these meant later if  
14 you want, but that's what it says there.

15 And then "talking about going through  
16 documents and so forth" and "he didn't seem to  
17 be addressing issue of renovations. Wondering  
18 if I should sell it." I think what she said  
19 was, "I was wondering if I should sell it."  
20 Then "decided that is ridiculous."

21 The next page. I'm not sure what this  
22 means. "Think about cascade in living  
23 situation." I don't know what she meant by  
24 that. "Probably makes sense to go forward.

00091

1 Send to" -- and that's all I had down there.

2 I have a line. "Talk to a couple of  
3 people, Re: How should be proceed," but I guess  
4 it should be, "how I should proceed" is probably  
5 what I meant. "Maybe should have someone talk  
6 to our lawyer." Then "Niece, Thomas Whitney" --  
7 I can't read the word before that. "Thomas  
8 Whitney at Choate, Hall & Stewart." I believe  
9 that was a referral from her niece to this  
10 lawyer or something like that.

11 The last page must have been an  
12 earlier one because it says, "Ilagua Falls,"  
13 which was where he must have been going on the  
14 trip to Argentina that never happened, so I  
15 assume somehow that had been on this pad  
16 earlier.

17 Q. And just so I'm clear, Mr. Bogorad, you  
18 indicated that when Kathy telephoned you at  
19 home on January 25, 2004, you took these notes  
20 concurrent with that telephone call; is that  
21 right?

22 A. That's correct.

23 Q. Other than this conversation here, do you have  
24 notes of other conversations that you took

00092

1 between you and Kathy Mullinix?

2 A. No.

3 Q. And why did you take notes on this occasion?

4 A. Partially, I suppose, because I had a pad next

5 to me and I tend to do a lot of interviews in

6 my job and so I'm used to taking down as many

7 words as I can. And it struck me that this was

8 a call that was perhaps setting up something

9 for litigation or some claim or whatever and it

10 would probably be helpful to have it down in

11 writing.

12 Q. Any other reason why you decided to take notes

13 on this occasion?

14 A. No.

15 Q. Did you record the conversation in any other

16 fashion besides your notes here?

17 A. No.

18 Q. And is it fair to say that you used these five

19 pages of notes in preparing answers to requests

20 for interrogatories?

21 A. Yes.

22 Q. If you would turn to the third page, six lines

23 down --

24 A. Yes.



00093

1 Q. -- can you tell me again what just that line

2 says.

3 A. "Couldn't if paying bills."

4 Q. And what is it that that is in reference to?

5 A. I don't know for sure. It was in the context of

6 what Jim told her, so my best recollection would

7 be that -- it says, "Jim said, 'would take some

8 time to have named executors.'" I assume it was

9 some kind of reference on her part that bills

10 could not be paid by the estate because they

11 weren't executors maybe or something like that.

12 Q. "Jim" is referring to "Jim Gross"; is that

13 correct?

14 A. Correct.

15 Q. Was anyone other than you on the telephone call

16 with Ms. Mullinix from your end?

17 A. No.

18 Q. Do you have any knowledge whether anyone was on

19 the telephone conversation between you and

20 Ms. Mullinix on her end?

21 A. No.

22 Q. The statement that you read that is beginning

23 six lines down on page 3 of your handwriting

24 notes of that conversation, do you recall at any

00094

1 point Jim Gross making a statement or telling  
2 you that he made a statement to Ms. Mullinix  
3 about the need to get executors appointed?

4 A. No, I don't recall.

5 Q. After the 6th line, the 7th, 8th, 9th, 10th  
6 line, could you tell me again what those say?

7 A. "Issue of renovations" or "we didn't seem to be  
8 addressing issue of renovations."

9 Q. And what do you understand that statement to be?

10 A. She seemed to be frustrated that she wanted Jim  
11 to somehow commit to paying or -- she was  
12 phrasing it as in, "Where do I send these  
13 bills?" As if it was a given that the estate  
14 would pay for this, which it certainly wasn't.

15 And she was phrasing it at least as  
16 if she was exasperated that even though she was  
17 asking about the issue of renovations, he was  
18 talking about other things like being appointed  
19 executor and things of that sort.

20 Q. Did you have a sense that Kathy was frustrated  
21 during this conversation?

22 A. I had a sense that she was trying to set it up  
23 as if she knew that this was going to end up in  
24 the recommendation of a lawyer. That she

00095

1 probably was hoping that she could somehow get  
2 me to say that she could send the bills to a  
3 certain place, probably knowing that we had no  
4 expectation that we should be getting bills  
5 because there was no fee. I don't know whether  
6 she knew that, but the tone of her voice led me  
7 to believe that she was probably not surprised  
8 to hear that we were not giving her a place to  
9 send the bills.

10 Q. Prior to January 25, 2004, did you have a  
11 conversation with Kathy Mullinix indicating  
12 that the estate did not view her statements  
13 of what your father promised her to be the  
14 responsibility of the estate?

15 A. I don't recall any such conversation, no.

16 Q. Do you recall having a conversation with her  
17 on January 25th and expressing that sentiment?

18 A. Yes. My best recollection -- and I wrote down  
19 what she said pretty much verbatim but I didn't  
20 write down anything that I said. But my best  
21 recollection is that in response to her request  
22 to send the bills, that I mentioned that the  
23 attorney for the estate had advised us as future  
24 executors that it would be a violation of our

00096

1     fiduciary responsibilities to pay this, that it  
2     was not an appropriate claim on the estate.

3             You know, I don't recall the exact  
4     words I used, but certainly that would have been  
5     the gist of my comments because I had just  
6     received the letter from that lawyer about a  
7     week or two ago.

8   Q.   And when had you consulted with a lawyer about  
9     whether the estate was under an obligation to  
10    pay for what Ms. Mullinix claimed?

11   A.   It was one of the many questions that we had as  
12    soon as we got back from Mexico, I guess, and  
13    the funeral occurred. This was a lawyer that  
14    was Matthew Berlin, who my father had retained  
15    to prepare the wills and so on.

16            And we had various questions. I guess  
17    the first I had known about payment for -- the  
18    issue of possible payment for the renovation was  
19    a report from Kiki that Kathy had mentioned this  
20    on the plane back from Mexico. So, obviously,  
21    we wanted to know whether this was something  
22    that struck us as odd since he wasn't  
23    alive anymore, but we certainly wanted to ask  
24    the attorney for a legal opinion.

00097

1 Q. When did you have the conversation with Kiki  
2 about the statements made during the plane ride  
3 home?

4 A. I don't remember. It probably would have  
5 been -- she came back right away after my father  
6 died to start arranging things for the funeral.  
7 And my wife and the children and I stayed down  
8 in Mexico to make sure that the body was  
9 transported back with us and so on.

10 So we were there a few more days  
11 dealing with the state department. I would  
12 guess it was a phone call after we got back to  
13 Washington but I don't recall.

14 Q. Is it your testimony that your sister and  
15 Ms. Mullinix both left Mexico at the same time?

16 A. They were on the same plane, I believe, at least  
17 the first flight, I don't know whether -- I  
18 guess one was going to New York and the other  
19 was going to Boston, so I assume they probably  
20 changed planes and one went to New York and one  
21 went to Boston, but I'm not sure about that.

22 Q. And you recall having a conversation with your  
23 sister at some point after that about her  
24 conversation with Kathy Mullinix on the plane?

00100

1 Q. So is it your recollection that your sister told  
2 you at some point that during this conversation  
3 with Kathy Mullinix on the plane ride back from  
4 Mexico, that in response to Kathy's statements  
5 about your father's intentions to pay for up to  
6 \$400,000 of renovations and that your sister  
7 responded "don't worry"?

8 A. I think it was something to that effect, but it  
9 was certainly not in the -- I didn't interpret  
10 it and I don't think the words would have been  
11 interpreted reasonably to mean, "Don't worry,  
12 we're going to pay for it." But rather, "Don't  
13 worry about it now, we'll deal with that stuff  
14 later" kind of thing.

15 Q. Well, I guess that's what I'm trying to figure  
16 out. Do you recall what your sister told you  
17 that she said to Kathy Mullinix?

18 A. No. I've told you everything that I know.

19 Q. And you don't have any understanding as to how  
20 Kathy Mullinix interpreted those statements?

21 A. No.

22 Q. And your interpretation of those statements is  
23 based upon what?

24 A. Just the context of whenever I heard about what

00101

1 my sister said and that I would assume, if I  
2 were in the situation, I would say something  
3 similar, just to try to, you know, ease a  
4 grieving person.

5 But, obviously, since we don't have  
6 any legal basis for knowing what could be paid  
7 or anything, it certainly wasn't any -- you  
8 know, I would have assumed that she would do  
9 the same thing as I would and not make any kind  
10 of legal commitment -- not that we could have  
11 anyway about what would or would not have been  
12 payable or anything legalistic like that.

13 Q. Did you have any information during your  
14 father's lifetime about any intent on his part  
15 to pay for renovations to an apartment that  
16 Kathy Mullinix purchased?

17 A. No, not that I can recall.

18 Q. We've talked a little bit about an apartment.  
19 I'd like to make sure we are both on the same  
20 page.

21 What is your understanding of the  
22 apartment that we're -- strike that.

23 What apartment are you referring to  
24 when you say Kathy made these statements?

00103

1 5th Avenue?

2 A. I had a conversation with her about that topic.

3 I'm not sure that she told me at that point that

4 she had already signed a contract. Although, I

5 believe, from reading the records since then, it

6 seems that she had probably the week before

7 that.

8 Q. For ease, if it is okay with you, I'm going to

9 refer to the "Apartment" --

10 A. Unless you tell me otherwise, that means the 5th

11 Avenue apartment.

12 Q. Is that fair?

13 A. Yes, that is fine.

14 Q. When did you first have a conversation with

15 Ms. Mullinix about the Apartment?

16 A. It was in February, mid-February of 2003. Kathy

17 and my father were up for a brunch that my

18 sister-in-law was having for her child who was

19 having a Bar Mitzvah, I guess it was, and we

20 discussed it at that point, at that sort of

21 brunch.

22 Q. What do you recall about that discussion with

23 Ms. Mullinix?

24 A. That she had said that her -- that she was



00104

1 selling -- and, again, I'm not sure that then  
2 some of these may have happened already or that  
3 they were about to happen -- but that she was  
4 selling or was going to be selling her apartment  
5 on 87th Street and buying an apartment on 5th  
6 Avenue. Because her son, who was, you know, a  
7 knowledgeable real estate person, an executive  
8 at a real estate investment trust, had advised  
9 her that the values would increase faster on 5th  
10 Avenue than they would on 87th Street.

11 Q. Was anyone else present for this conversation  
12 between you and Ms. Mullinix?

13 A. I don't believe so, no.

14 Q. And what else do you recall Ms. Mullinix saying  
15 about that Apartment at that time?

16 A. That's all I recall from that conversation.

17 Q. Did you say anything in response to her  
18 statements during that conversation?

19 A. Not that I recall. I probably, you know,  
20 said -- I don't know what I said, but I'm sure  
21 it was nothing negative. I probably was nodding  
22 or whatever.

23 Q. Did Ms. Mullinix make any statements to you  
24 during that conversation about Mr. Bogorad's --

00107

1 Apartment prior to February 16th of 2003?

2 A. You asked me whether I talked to Kathy about it.

3 I don't recall whether I heard about it from

4 Kiki or possibly from my father.

5 Q. Do you remember at any point hearing from your

6 sister about the Apartment?

7 A. I'm sure we talked about it; I wouldn't say it

8 was "heard about." My best recollection is it

9 was after I knew about it from this

10 conversation, but I may have talked to her

11 before that. But after that, I'm sure we talked

12 about it on occasion.

13 Q. Do you recall whether you spoke with your father

14 at any point about the Apartment?

15 A. I really don't remember ever talking to him

16 about it. I'm sort of surprised to say that,

17 because I would think it might have come up, and

18 it may have, but I don't recall any time that it

19 did.

20 Q. And why are you surprised that it wouldn't have

21 come up?

22 A. Well, from reading all these documents, it's

23 obvious that he was involved in making decisions

24 about it, what to put into the apartment and

00108

1 that kind of thing. So it seems like something  
2 that he might well have mentioned at one point  
3 or another, but I just don't remember him ever  
4 specifically talking about it.

5 Q. So it's fair to stay that based upon your review  
6 of documents in this case, that you have a sense  
7 that your father was involved in making  
8 decisions related to the Apartment?

9 A. It's my sense of it, but I'm probably no better  
10 than anyone else reading the documents.

11 Q. Is there anything else about the conversation  
12 with Kathy Mullinix on February 16, 2003, that  
13 you can recall that's related to the Apartment  
14 or otherwise?

15 A. I recall telling my wife about it just  
16 afterwards, because I was struck, as a real  
17 estate expert myself, that this seemed like an  
18 awfully self-confident kind of prediction, that  
19 one could somehow predict that an apartment on  
20 5th Avenue would appreciate faster than an  
21 apartment on 87th Street.

22 Obviously, all things being equal, an  
23 apartment over on 87th Street would cost less  
24 than one on 5th Avenue. But, in my judgment,

00122

1 A. To her claim that there was an agreement?

2 Q. Yes.

3 A. No, I don't. I answered that before.

4 Q. Do you recall asking her if she had anything in  
5 writing to that effect?

6 A. No, I did not ask her.

7 Q. Have you ever asked her that question?

8 A. I have not personally, no.

9 Q. During the early January 2004 conversation, did  
10 Jim Gross ask Ms. Mullinix if she had anything  
11 in writing?

12 A. I don't know. I don't believe so, no.

13 Q. To your knowledge, has anyone asked her that  
14 question since the time of your father's  
15 passing?

16 A. I believe the estate lawyers asked her.

17 Q. And you believe that based upon what?

18 A. Reading the documents.

19 Q. From the pleadings and the other correspondence  
20 in this case?

21 A. Yes.

22 Q. During the January 25, 2004 conversation, the  
23 telephone conversation with Ms. Mullinix, other  
24 than what is reflected in your notes that have

00123

1     been marked as Exhibit 5, do you recall any  
2     other conversation with Ms. Mullinix during that  
3     same telephone call regarding issues not related  
4     to the Apartment?

5   A.  Her statement, her admission or whatever,  
6     indicated that the call began with conversations  
7     about my wife's cancer.  And I -- both of us did  
8     not recall that it was the same conversation.  
9     But certainly Cathy was very helpful in terms of  
10    obtaining access to a doctor in New York to  
11    advise on my wife's case, and it is certainly  
12    possible that that was the beginning of our  
13    conversation.

14           And as Kathy said in her submission  
15    that she then asked just to talk to me.  But  
16    that was not either something we specifically  
17    remembered or actually that we remembered even  
18    after reading that, but it's certainly quite  
19    possible.

20   Q.  Just so I'm clear, you do recall at some point  
21    having a conversation with Kathy Mullinix and  
22    your wife regarding Ms. Mullinix assisting your  
23    wife in obtaining an appointment related to your  
24    wife's cancer?

00133

1 Q. For the trips that you and your father,  
2 Ms. Mullinix, and your family and your sister's  
3 family took together, was there a typical course  
4 of who paid for those trips?

5 A. I guess what we evolved into -- and I can't say  
6 for sure whether that was the case for the first  
7 trip or two, it may not have been -- but what we  
8 evolved into was that Kiki and I and our spouses  
9 paid for all of the restaurant-types of things  
10 for the whole of group, including my father and  
11 Kathy; and that my father paid for all of the  
12 hotel and ground transportation and tours and  
13 that kind of thing.

14 And I believe, in general, we paid for  
15 our own air transportation, although, it is  
16 possible that that wasn't always the case, or  
17 it may even have been different with respect to  
18 KiKi, or maybe there were some frequent flyer  
19 miles that were used for some people. But I  
20 believe we generally paid for our own air  
21 transportation, at least with my personal  
22 family I did.

23 Q. Was there any sort of after-the-fact equalling  
24 up among the family members to make sure that

00134

1 everybody contributed a roughly equal amount?

2 A. Kiki, Jim, Cindy and I tried to keep sort of  
3 track of how much we were spending and we tried  
4 to equalize. I can't swear that we remembered  
5 to do it every time, but that was the goal. But  
6 we were keeping a rough track on receipts on  
7 that score. There was no effort to decide  
8 whether that was less or more than the hotels or  
9 the tours or anything else that my father was  
10 paying for.

11 Q. Was there any inclusion of your father and/or  
12 Ms. Mullinix in those conversations or attempts  
13 to equalize?

14 A. No, no.

15 Q. Is it fair to say that, from your perception,  
16 your father was generous in the sense of  
17 providing some financial aspect for vacations  
18 and gifts and things like that?

19 A. He was very generous. Certainly the  
20 vacations -- I mean, personally, the thing I  
21 appreciated the most was that he was organizing  
22 them and spending a huge amount of time doing  
23 it. But he also certainly paid for a big chunk  
24 of it in the aspects that I just mentioned,

00135

1 which was very generous.

2 Q. Is there anything about your father that you

3 would characterize as not generous?

4 A. No.

5 Q. When you first became aware that there were

6 planned renovations to the Apartment, did you

7 have any understanding as to the financial

8 arrangements made with respect to those

9 renovations?

10 A. To the extent I knew what was happening before

11 he died, absolutely no. Afterwards, it was all

12 based on the documents that are in the case and

13 that we've already talked about.

14 Q. When you first became aware from your sister,

15 Kiki, about Ms. Mullinix's statements that your

16 father agreed to pay for a certain amount of

17 renovations to the Apartment, you're confident

18 that that occurred after your father died; is

19 that correct?

20 A. Absolutely. That was the discussion they had

21 on the plane coming back from after he died.

22 Q. In late January of 2004, when you had the

23 telephone conversation with Ms. Mullinix that

24 is reflected in your notes as Exhibit 5, do you



00137

1 the Apartment was being renovated?

2 A. I do recall that it said that, yes.

3 Q. Did you know that your father and Ms. Mullinix

4 were storing belongings together?

5 A. No, I didn't.

6 Q. Other than in the context of these discussions

7 prior to a lawsuit being filed and subsequent to

8 a lawsuit being filed, were you aware of the

9 fact that there was a storage cost agreement

10 between Ms. Mullinix and Mr. Bogorad?

11 MR. VARN: Objection.

12 A. Could you rephrase the time on that.

13 Q. Sure. Let me break it down for you actually.

14 Prior to your father's death, were

15 you aware of an agreement between him and

16 Ms. Mullinix related to payment of storage

17 costs?

18 MR. VARN: Objection.

19 A. No.

20 Q. After your father's death, do you recall when

21 you first learned of that specific allegation

22 from Ms. Mullinix?

23 A. The first time I recall is the letter that I

24 believe was sent to the estate's attorney in

00142

1 Q. With respect to your statement just now that --

2 A. I'm sorry, I probably do have one other thing,

3 yes.

4 The other thing I was struck by is on  
5 page 4 where the description here of my father  
6 being "instrumental in deciding to purchase the  
7 Apartment on 5th Avenue" was directly different  
8 from what she had told me contemporaneously in  
9 February of 2003; which is, as we discussed  
10 before, she had said that her son Brendan was  
11 the one who wanted her to buy it because it  
12 would be a better investment. So that was in  
13 conflict with what I heard personally myself  
14 from Kathy at the time.

15 Q. With respect to that last statement that you  
16 just made, did Ms. Mullinix tell you at any  
17 point that Mr. Bogorad was not instrumental in  
18 the decision to purchase the Apartment?

19 A. No, she didn't discuss it like that.

20 Q. So your assumption that it was -- strike that.

21 In February of 2003 when Ms. Mullinix  
22 made mention of her son Brendan Mullinix's  
23 opinion, you assumed that that was the only  
24 factor in Ms. Mullinix's decision to buy the

00143

1 Apartment?

2 MR. VARN: Objection.

3 A. The way she described it to me was that that was  
4 why she had purchased it. So I thought it was  
5 odd that that reason wasn't mentioned here and  
6 another reason was mentioned here.

7 Q. The fact that this mentions that Mr. Bogorad was  
8 instrumental in that decision, however, I just  
9 want to understand, was that inconsistent with  
10 any statements Ms. Mullinix told you about  
11 Mr. Bogorad's involvement in the Apartment?

12 MR. VARN: Objection.

13 A. My understanding of what she told me was that  
14 the reason she bought it was because of her son,  
15 and that that was the reason. If my father was  
16 instrumental in it, I would have expected her to  
17 say that that was another reason or the only  
18 reason. And, as it says here, that seems to be  
19 the key reason that she is giving in August of  
20 2004, and, in my view, it was inconsistent.

21 Q. In the conversation -- the only conversation  
22 that you had prior to your father's death with  
23 Ms. Mullinix about decisions relating to  
24 purchasing the Apartment was in February of '03

00146

1 Q. You also indicated that you were surprised in  
2 this August of 2004 letter about Ms. Mullinix's  
3 claim that you assured her that she could remain  
4 in the Lexington house until her Apartment was  
5 renovated; is that a fair characterization of  
6 what you said?

7 A. Yes.

8 Q. Do you recall having a specific conversation  
9 with Ms. Mullinix about her residing in the  
10 Lexington home?

11 A. Yes, in the conversation of January 25th.

12 Q. And, again, that is the notes that are reflected  
13 in Exhibit 5; is that correct?

14 A. Correct.

15 Q. And Exhibit 5, just so I'm clear, reflects only  
16 statements that she made to you; is that  
17 correct?

18 A. That's correct.

19 Q. It doesn't reflect statements that you made to  
20 her?

21 A. That's correct.

22 Q. But it's your testimony that at no point did you  
23 assure Ms. Mullinix that she could remain in the  
24 Lexington house until her Apartment was

00147

1 renovated?

2 A. Not in terms of completion of renovation. She  
3 had indicated in that cause that she thought  
4 about four months would be about the right time,  
5 and that seemed to be consistent with what was  
6 likely timing. And she had indicated at some  
7 point to me, and I can't remember exactly when,  
8 that she assumed it would make the most sense to  
9 sell the house during the spring season.

10 So everything was consistent with that  
11 throughout that whole period where she was being  
12 helpful in terms of getting her way out of the  
13 way of the house and asking when the house was  
14 going to be closing, and finding out it was the  
15 end of June, which was five months after we had  
16 had this conversation.

17 And at one point she mentioned to Kiki  
18 in an e-mail that she had rented an Apartment in  
19 New York, which was a couple of months, I guess,  
20 before the closing.

21 And everything was very friendly,  
22 which there was no indication that there was any  
23 issue with the closing or when it would happen  
24 or anything else. So that is why I was taken

00148

1     aback to find out that she thought the estate  
2     should be paying for something, paying for her  
3     Apartment at that time.

4   Q. Did you, at any point after your father's death,  
5     independent of needing to sell the house, did  
6     you contemplate asking Ms. Mullinix to move out  
7     of the house?

8   A. I don't believe so. You know, it seemed to us  
9     that there was no reason why we couldn't sell it  
10    with her things in it; as long as she was doing  
11    what she had already volunteered to do, which  
12    was to keep it neat and, you know, there was no  
13    reason why we couldn't have the house shown by a  
14    broker and so on.

15   Q. And did you find her actions during the time  
16    after your father's death and before the house  
17    was sold to be consistent with what she promised  
18    she would do?

19   A. Yes.

20   Q. Did she create any problems or issues with  
21    selling the house?

22   A. No, I don't believe so. Kiki was more  
23    intimately involved with it, but I was not aware  
24    of anything.

00220

1 estate denies those claims, correct?

2 A. Correct.

3 Q. And with respect to paragraph 53, the estate

4 denies the allegations, "Except deny having any

5 knowledge or information sufficient to form a

6 belief as to the truth of the allegations in

7 the first sentence thereof"; is that correct?

8 A. I think it says "Except deny having knowledge or

9 information sufficient" -- that's correct.

10 Q. And with respect to the first sentence in

11 paragraph 53 of the Complaint, "Mr. Bogorad

12 promised Ms. Mullinix that she would live in

13 the Lexington home until such time as the

14 renovations to the Apartment were complete." Is

15 that a fair reading of that sentence?

16 A. It's a fair reading of the sentence, yes.

17 Q. Do you understand the basis for the estate

18 denying the allegations contained in paragraphs

19 53 through 56?

20 A. At least part of the reasons. I think I

21 understand all of the reasons, some of which are

22 related potentially to legal issues. But the

23 basic issue here is that there was never such a

24 commitment to allow her to live there until it

00221

1 was complete. There was certainly never such a  
2 commitment. I think she asserted it someplace  
3 that we had even told her that she could -- it  
4 was during this phone call on January 25th that  
5 I had told her that she could rent an Apartment,  
6 if necessary, and I certainly said nothing of  
7 the kind.

8 Q. During that conversation or at any point, do you  
9 recall Ms. Mullinix asking you about alternative  
10 living arrangements once the Lexington house was  
11 sold?

12 A. No, she never asked me about that.

13 Q. Do you recall Ms. Mullinix ever suggesting that  
14 the estate should consider alternative living  
15 arrangements for her after the Lexington house  
16 was sold?

17 A. She never suggested this to me and I never  
18 heard that she had suggested that to anybody  
19 else.

20 Q. With respect to the claims in the Complaint  
21 regarding your statements about the Lexington  
22 home, your contention is that those statements  
23 are untruthful; is that correct?

24 A. They are incorrect, yes.



00230

1 Q. Do you deny making a statement like that to

2 Ms. Mullinix?

3 A. I do not remember making it. I am pretty sure I

4 never made it. Proofing the negative is

5 difficult, but I really don't believe I ever

6 made that statement.

7 Q. Do you recall any other instance where you

8 didn't have a verbal conversation with

9 Ms. Mullinix about her continuing to reside in

10 the Lexington home, but had any other

11 communication via e-mail or other writing with

12 Ms. Mullinix?

13 A. Yes. There was at least 20 e-mail exchanges,

14 which I think is in the record, which was

15 reassuring. You know, she had made the argument

16 when she called on January 25th that, you know,

17 she wanted to sort of talk about the timing and

18 indicate that she wanted to stay for four months

19 or so, but it was a little ambiguous as to long

20 construction would take.

21 And, obviously, we were hoping that

22 there wouldn't be battles over this.

23 On the other hand, she and the brokers

24 and everyone else said that, "of course, you'd

00231

1 want to sell the house in the spring." And I  
2 was certainly hoping that we wouldn't have an  
3 issue where we'd have to have her leave before  
4 the settlement.

5 And it sounded like things would all  
6 work out well, because we couldn't even put it  
7 on the market for some period of time because we  
8 weren't the executors yet, and that took time  
9 from the time of settlement. So it seemed like  
10 everything was fitting together well.

11 She e-mailed at one point, I think to  
12 Kiki and me, wondering about the about the  
13 status of the timing and exactly, you know, what  
14 did we know about when she had to leave. And it  
15 seemed like all that was fitting together well.  
16 As I said earlier, she was very cooperative  
17 about things and there didn't seem to be any  
18 real contention about this. I think her e-mail  
19 was a little bit vague.

20 And I think I sent an e-mail to Kiki  
21 at that point sort of indicating that it seemed  
22 like this was good news that we weren't going to  
23 have battle over this, a little ambiguous but it  
24 seems like it was all fitting together.

00232

1 And then when she continued to be very  
2 cooperative about it and e-mailed Kiki that had  
3 she moved to an apartment, I think at the end of  
4 April, even though that was two months before  
5 settlement, it seemed like everything was very  
6 smooth in that regard, which we were happy with.  
7 And that is why I was so shocked when she came  
8 in and asked for a claim for paying for this  
9 apartment which we had no -- we never talked  
10 about it before.

11 Q. Other than this e-mail communication that you  
12 just referred to, can you recall any additional  
13 communications either verbally or in writing  
14 with Ms. Mullinix about her claims, either  
15 regarding continuing to remain at the Lexington  
16 home or cost of alternative housing after the  
17 Lexington home was sold?

18 A. No, there were no -- other communications in  
19 that regard, that was always -- there was never  
20 any conversation about cost for any alternative  
21 and there was never any contention about when  
22 the closing was that I was aware.

23 Q. At any point, did you have an understanding,  
24 prior to the sale of the Lexington home, that

00233

1 the renovations to Ms. Mullinix's Apartment

2 would not be complete by that point?

3 A. I don't think I ever really knew the timing of

4 it, no.

5 Q. Do you recall any information -- or do you

6 recall the status of the renovations to her

7 apartment between January of 2004 and June of

8 2004?

9 A. At some point we learned that she had signed the

10 contract for renovations I believe in March

11 after she had been -- because I know the

12 estate's lawyer had given her notice that the

13 estate didn't think that they would be paying

14 for this, and that she should not be proceeding

15 on the basis of any assumption in that regard.

16 So that dated that.

17 And later we've seen documents that

18 showed that that was sometime in March, I don't

19 know that we knew that at the time. I was

20 really not aware of the schedule for renovation.

21 Q. Did you ever inquire of Ms. Mullinix or any one

22 else as to the timing of the renovations?

23 A. I don't believe so, no.

24 Q. Did you ever have any conversation with

00234

1 Ms. Mullinix about whether she should sign a

2 contract for the renovations to the apartment?

3 A. In this call on January 25th, my recollection is

4 that I told her, you know, the estate -- the

5 lawyer for the estate had advised that this was

6 not something that we as future executors could

7 pay, it would be a fiduciary violation. And,

8 obviously, it was left up to her whether she

9 chose to proceed with it. But I'm pretty sure

10 that I told her at that point, and certainly she

11 received notice shortly after that from the

12 attorney directly, that we, as future executors

13 or whatever, we did not think it was something

14 that we could pay her.

15 Q. And what was the basis for that conclusion that

16 it was not something that the estate could pay

17 her?

18 A. It was communication with lawyers and I don't

19 think I'm supposed to talk about that.

20 MR. VARN: You're not.

21 MS. DINEEN JERRETT: I would request

22 that the witness answer the question because he

23 just communicated that he -- or he just

24 testified that he communicated with Ms. Mullinix

# EXHIBIT C

Kiki

1

Volume: I  
Pages: 207  
Exhibits: 1-13

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CIVIL ACTION No. 04-12684-WGY

-----X  
KATHLEEN P. MULLINIX,  
Plaintiff,  
vs.

KIKI BOGORAD-GROSS and LEONARD P.  
BOGORAD, as They are Executors  
of the Will of Lawrence Bogorad,  
Defendants.  
-----X

DEPOSITION of: KIKI BOGORAD-GROSS  
Date: Friday, January 20, 2006  
Time: 10:00 a.m.  
Location: Choate, Hall & Stewart, LLP  
Two International Place  
Boston, MA 02110

--- REPORTER: Evelyn M. Slicius, CSR, RPR ---

K. L. GOOD & ASSOCIATES  
Registered Professional Reporters  
P.O. BOX 367  
Swampscott, Massachusetts 01907  
Tel. 781-598-6405 \* Fax. 781-598-0815

OK.L. Good & Associates

2

1 APPEARANCES:

2

3

CHOATE, HALL & STEWART, LLP  
(By Michelle L. Dineen Jerrett, Esq.)  
Page 1

00019

1 my mind.

2 Q. Based upon, again, the same rough time frame,

3 the last five years of his life, if your father

4 were traveling to somewhere other than New York,

5 would he generally let you know that?

6 A. Generally, not always, but generally.

7 Q. And would he try to provide you a contact phone

8 number to reach him?

9 A. If he were going on a long trip, he generally

10 would.

11 Q. Did your father have a mobile phone?

12 A. No.

13 Q. Do you know if he routinely checked messages

14 left at his home or his office?

15 A. I think so.

16 Q. Yesterday when we deposed your brother, we asked

17 certain questions about your mother. And I

18 recognize that that is probably a difficult

19 topic to speak about, but I did want to talk to

20 you a little bit about her also.

21 Where is your mother physically living

22 now?

23 A. She is at the Fairlawn Nursing Home in

24 Lexington.



00020

1 Q. And how long has she been there?

2 A. She's been there about five years, I believe,

3 but I'm not exactly sure.

4 Q. And do you know what level of care is provided

5 at that facility?

6 A. Nursing care.

7 Q. Do you know whether it is considered skilled

8 nursing care?

9 A. Yes.

10 Q. And what is the condition, if you know, that

11 has caused your mother to be in the Fairlawn

12 Nursing facility?

13 A. Alzheimer's.

14 Q. Has she received a formal diagnosis?

15 A. I believe so. Again, it's a hard disease to

16 diagnose, but as far as I know it's pretty

17 definite.

18 Q. And do you know, roughly, when the diagnosis was

19 made?

20 A. I would say around 1998 she was -- her symptoms

21 worsened and she was -- she began living in an

22 assisted-living facility in Natick,

23 Massachusetts, and she was there for a few

24 years, I would guess.

00023

1 Q. I understood from your brother yesterday that  
2 it's been difficult, from a family member's  
3 perspective, because your mother oftentimes  
4 doesn't remember people?

5 A. Yes.

6 Q. How often do you see your mother?

7 A. Once a week.

8 Q. Does she recognize you?

9 A. I don't think so.

10 Q. Did you have a sense of how often your father  
11 visited your mother before he died?

12 A. I think he went two or three times a week if he  
13 was in town.

14 Q. Did you and your father ever discuss your  
15 mother's medical condition during the last five  
16 years?

17 A. If there were changes in her condition or if  
18 there were any issues about the nursing home or  
19 anything like that, if there was just sort of a  
20 concern about her, you know, it was hard to  
21 visit her, that sort of thing.

22 Q. And did your father express those sentiments to  
23 you?

24 A. Mm-hmm.

00025

1 Q. And you are here testifying at a deposition  
2 pursuant to those deposition notices, correct?

3 A. Yes.

4 Q. I'd like to talk to you a little bit in more  
5 detail about your relationship with your father  
6 just so I can understand how you characterize  
7 it.

8 Did you talk with your father during  
9 the last five years of his life about personal  
10 matters?

11 A. Yes, but not extensively.

12 Q. And would that go for both sides of the  
13 conversation?

14 A. Yes.

15 Q. So would it be fair to say that you shared  
16 certain personal information with your father  
17 and vice versa but not in extensive detail?

18 A. Yes.

19 Q. Your brother testified yesterday that he  
20 generally did not have discussions with your  
21 father about feelings. Do you recall that  
22 testimony?

23 A. Yes.

24 Q. Would you describe your conversations with

00026

1 your father in a similar fashion?

2 A. I think so, yes.

3 Q. During the last five years of his life, did your

4 father discuss financial matters with you?

5 A. Certain ones, I don't think all of them, but

6 certain financial matters.

7 Q. What do you recall him discussing with you?

8 A. When he amended his will, he notified us about

9 that; certain insurance policies or things like

10 that; the arrangement that he had gifts

11 regarding paying for our children's college

12 tuition.

13 Q. Any other examples of financial matters that you

14 can recall him discussing with you during the

15 last five years?

16 A. Not really; other than, you know, maybe selling

17 his house, that is not really financial, but the

18 possibility of doing that. But that's all that

19 I can remember.

20 Q. The first thing you mentioned was when your

21 father amended his will he discussed that with

22 you, correct?

23 A. Yes.

24 Q. Do you know roughly when that occurred?

00036

1 father send you a check and have you make a  
2 payment?

3 A. I believe it was once a year.

4 Q. So is it fair to say that it was roughly five  
5 times during the last five years?

6 A. Yes.

7 Q. And who handled that in your household, you or  
8 your husband?

9 A. My husband.

10 Q. Without disclosing any content, did you ever  
11 discuss the issue with your husband?

12 A. Nothing more than "we need to make this  
13 payment."

14 Q. And, to your knowledge, did you or your husband  
15 make the payments as your father had instructed  
16 him to?

17 A. Yes.

18 Q. You also mentioned that -- related to financial  
19 matters during the last five years of your  
20 father's life -- you and he discussed payments  
21 for your children's college education; is that  
22 correct?

23 A. Yes.

24 Q. Do you know on how many occasions you had that

00037

1 discussion with your father?

2 A. I don't. My son was in school for four years,  
3 so it may have been -- and he didn't actually  
4 make all the payments, so it probably was two  
5 years. And, again, my husband was the one who  
6 typically made those arrangements, so there  
7 probably was maybe three or four conversations  
8 about it.

9 Q. When was the first conversation?

10 A. I assume it was before Daniel went to school  
11 when my father said, "I would like to contribute  
12 \$10,000 a year to his college education."

13 Q. And that conversation occurred over the phone or  
14 in person?

15 A. I don't remember.

16 Q. Was it between you and your father or were there  
17 others --

18 A. It is possible my husband was there, I don't  
19 remember.

20 Q. As best you can recall, what did your father  
21 tell you as to his reasons for wanting to do  
22 this?

23 A. I don't recall the actual conversation. I think  
24 he just said that he wanted to make a gift of

00038

1 helping us with his tuition.

2 Q. Did he indicate that there was any sort of tax

3 reason for him wishing to make this gift?

4 A. I believe that he did, that he made the payments

5 directly to the University, so that there were

6 some tax advantages.

7 Q. So for how many years did this payment actually

8 occur?

9 A. Freshman year, sophomore year -- I don't

10 honestly know, but Daniel's junior year and not

11 senior year.

12 Q. What year did Daniel enter college?

13 A. 2001.

14 Q. So, if I understand you correctly, for 2001,

15 2002, possibly 2003, but not 2004, your father

16 made a payment directly to the University of

17 \$10,000 per year?

18 A. Correct.

19 Q. Did he send you the check and you sent it to

20 the University or did he send it directly to the

21 University?

22 A. I don't remember. As I said, my husband was the

23 one who paid the bill for the school, so he may

24 have -- I don't remember. I think that he sent

00051

1 to be close-to-the-vest about a lot of things.

2 Do you recall that?

3 A. Yes.

4 Q. Would you agree with that statement?

5 A. I would say so about some things, yes.

6 Q. What things would he be close-to-the-vest about?

7 A. I think emotional things he kept to himself or

8 he didn't share.

9 Q. Anything else?

10 A. I would say that is the main thing. I think he

11 shared things with us that he felt were relevant

12 to us.

13 Q. Would you say that your father was

14 close-to-the-vest about financial matters?

15 A. I think so. I think the same thing, that if it

16 were relevant to us, he would have shared them

17 with us.

18 Q. Can you recall any instance in the last five

19 years of his life where he shared a financial

20 matter with you that did not relate to you?

21 A. Not really, no.

22 Q. Did your father in general discuss purchases,

23 whether large or small with you?

24 A. I would assume large purchases, but he didn't



00052

1 make that many that I know of.

2 Q. At some point during the last few years of his

3 life your father purchased a Saab vehicle; is

4 that correct?

5 A. Yes.

6 Q. Is that something he discussed with you?

7 A. I think he told us he was going to buy one. We

8 actually went with him to pick it up.

9 Q. What do you recall him saying about it?

10 A. I think he said that he decided that he wanted

11 to get a new car and that this was probably

12 going to be the last car he would buy and he

13 wanted it to be a fun car. He often had bought

14 himself a Mercedes when he was able to.

15 And so I think it was a splurge or,

16 you know, something that he allowed himself --

17 he didn't allow himself very many extras -- but

18 I think this was something that when he wanted

19 to, he did.

20 Q. And when you say "we" went with him, who are you

21 referring to?

22 A. My mother, my son and myself. I believe he

23 drove him to the dealership and then he drove

24 the car back home.

00059

1 conversation with her?

2 MR. VARN: Objection. Asked and

3 answered.

4 A. No.

5 Q. When is the next most recent time that you

6 recall hearing about Kathy Mullinix?

7 A. Probably after my father's heart surgery.

8 Q. When was that?

9 A. I believe it was the end -- the latter part of

10 1997, I believe.

11 Q. And was this the procedure where your brother

12 testified yesterday he was at Mass. General

13 Hospital?

14 A. Yes.

15 Q. And what do you recall hearing about Kathy

16 Mullinix at that point?

17 A. I honestly do not remember the exact content of

18 that; it's just that I believe my father

19 mentioned that, as my brother said yesterday,

20 there was somebody who was checking on his

21 progress at the hospital; somehow we were told

22 that there was somebody else, you know, you

23 have to check, you have to be a family member

24 or somebody to check on people's status at the

00060

1 hospital, and somehow we found out that there  
2 was another person checking on him. So there  
3 was a little bit of wondering who this other  
4 person was.

5 And then at some point after my father  
6 recovered, there was some mention of -- and I  
7 honestly don't remember the context of it --  
8 mention of Kathy's existence, you know, that she  
9 was involved in his life.

10 Q. When your father was hospitalized at  
11 Massachusetts General Hospital, how did you  
12 hear that there was somebody else checking on  
13 his progress?

14 A. I honestly don't remember. I just know that  
15 at some point when calling in the hospital  
16 somebody said, "Oh, somebody else has called  
17 already," that's all that I remember.

18 Q. Did that strike you as unusual at the time?

19 A. Yes.

20 Q. Why was that?

21 A. My mother was not able to call, there was nobody  
22 else that I could think of who would be checking  
23 on him.

24 Q. As far as you can recall, did somebody tell you

00061

1 that it was another woman that was checking in

2 on him?

3 A. I don't remember.

4 Q. Did you question other family members as to

5 whether they had been checking in on your

6 father?

7 A. I don't know that I did. I just don't think --

8 I don't know.

9 Q. What was it about the information that you

10 received at that time that struck you as

11 unusual?

12 A. Just as I said, that there was no other person

13 -- I must have known that it wasn't my brother

14 and so it was unusual that there was another

15 person -- as I said, there was no one else who

16 would have been checking.

17 Q. Did you talk to your father about it while he

18 was at Mass. General?

19 A. I don't remember.

20 Q. Did you speak with your brother about it?

21 A. It's possible.

22 Q. When you heard that there was somebody else

23 checking in on your father, did you have a

24 conversation with anybody about the issue?

00062

1 A. Other than family members, I don't think so.

2 Q. Which family members did you discuss it with?

3 A. Probably my husband and possibly my brother, but

4 I can't remember.

5 Q. But you don't recall speaking with your father

6 during his hospitalization about it?

7 A. I don't remember. I don't remember if I did or

8 not.

9 Q. You said you were curious about it?

10 A. Yes.

11 Q. What did you do to satisfy that curiosity?

12 A. I'm not sure. I mean, he was in intensive care.

13 I'm not sure I asked him at that point, "who is

14 calling," it just didn't seem appropriate at

15 that point.

16 Q. Did you ask any of the hospital staff or the

17 nursing staff?

18 A. I don't remember if I did or not.

19 Q. Did you try to identify the name of the person

20 who was calling in?

21 A. I don't remember. I'm not sure they would have

22 told me anyway.

23 Q. Did you ask anybody to detail to you when the

24 person was calling in or how often?

00063

1 A. I don't think so, I don't remember.

2 Q. So is there anything specific that you can

3 recall in trying to do to satisfy your

4 curiosity?

5 A. Not specifically, no.

6 Q. What about generally?

7 A. No.

8 Q. After your father was discharged from

9 Massachusetts General Hospital, you said that

10 you can't quite recall the context but you

11 remember hearing about Kathy Mullinix?

12 A. Again, I don't remember how it was disclosed but

13 I believe, as best I remember, that he must have

14 mentioned that she was involved with his life.

15 But I honestly do not remember the context of it

16 or when or how far or what he said.

17 Q. You do recall a conversation with your father

18 about it, though?

19 A. Well, we found out somehow so I'm assuming he

20 was the one that told us about it, but I don't

21 remember the context of the conversation.

22 Q. Do you recall what your father told you about

23 Kathy Mullinix?

24 MR. VARN: Objection.

00064

1 A. No.

2 Q. Did he at any point tell you that he had a

3 romantic involvement with Ms. Mullinix?

4 A. At some point he did. I don't remember if it

5 was at that point, but at some point he did.

6 Q. What do you recall about that conversation?

7 A. Well, I guess the most specific conversation

8 was when he -- after his surgery and I believe

9 it was sometime in February or March of 1998, I

10 guess, he had some emotional issues, mental

11 issues. And I was -- I was trying to get a hold

12 of him and he was not -- it was one o'clock or

13 two o'clock in the morning and I couldn't reach

14 him, his phone was busy. So I drove out to

15 Lexington to see if he was all right and he was

16 very distraught and told me that he was very

17 upset because -- I mean, I suspect there was

18 knowledge of Kathy before that, but I think he

19 detailed the relationship more at this point.

20 He said that, you know, he was

21 involved with her and that she was thinking of

22 braking off the relationship and that he was

23 very distraught about it and that he loved her

24 and that he didn't want to lose her.

00065

1           So I think at that point, I became,  
2    you know, I was -- that was the most information  
3    I had gotten up to that point about their  
4    relationship. There was another man involved  
5    and she was trying to decide, where or what  
6    allegiance, you know, where to end up, and he  
7    was very distraught about it.

8 Q. As best as you can recall, that exchange with  
9    your father took place in February or March of  
10   1998?

11 A. I don't want to quote the date. It was after  
12   his surgery, after he had come out of being in a  
13   rehab facility, so he had moved back home. His  
14   surgery I believe was around November, so it was  
15   sometime --

16 Q. Of 2003 -- I'm sorry of 1997?

17 A. I believe so. So it was at some point after  
18   that.

19 Q. So he was at Mass. General for the surgery, and  
20   he was then transferred to a rehab facility --

21 A. Right, and then he was home.

22 Q. And then you estimated -- I believe your  
23   testimony was that during February or March of  
24   1998, he was having some emotional or mental



00088

1 MR. VARN: You said "brother."

2 MS. DINEEN JERRETT: Yes.

3 A. I think he -- my brother and I were happy that  
4 my father was happy because Kathy was a part of  
5 his life. So if that is interpreted as a  
6 positive feeling, then the answer is yes.

7 Q. Did your father tell you he was happy because  
8 Kathy was part of his life?

9 A. I don't know that he ever said that in so many  
10 words. He seemed happy.

11 Q. How did he seem happy?

12 A. You know, he was in a good mood, when they were  
13 together he seemed to be happy, he enjoyed her  
14 company, so I interpreted that he was happy that  
15 she was part of his life.

16 Q. Other than the conversation you had with your  
17 father at his house in the middle of the night,  
18 did your father ever tell you at other times  
19 that he loved Kathy Mullinix?

20 A. Not that I remember.

21 Q. Is that something that you discussed typically  
22 with your father?

23 A. No.

24 Q. Did you have any doubts during the time that you

00091

1 feelings were not fond of her because of that,  
2 because of the effects on my father.

3 Q. Other than that instance up until the time of  
4 his death, can you recall ever having negative  
5 feelings for Kathy Mullinix?

6 A. Well, I think there were probably feelings of  
7 a little bit of -- initially, I think -- that  
8 the relationship existed, but I think that I  
9 overcame that by realizing that my father was  
10 happy and that that was the most important  
11 thing. If I was uncomfortable with the  
12 relationship, I overcame that because of the  
13 end result. I'm not sure those are negative  
14 feelings. I'm just saying --

15 Q. And so you were uncomfortable when you learned  
16 about the existence of their relationship?

17 A. Yes.

18 Q. Why were you uncomfortable?

19 A. Well, my mother was still alive.

20 Q. Is that the only reason?

21 A. Yes, I think so.

22 Q. Up until the time of your father's death, how  
23 did you and Kathy Mullinix get along?

24 A. I think we got along reasonably well. You know,

00092

1 we saw each other and I think it was a cordial  
2 relationship.

3 Q. Did you consider her part of your family?

4 A. Not really. My father, I think, considered her  
5 part of the family. I don't think I -- I  
6 considered her to be with my father. So I  
7 wouldn't say -- if someone asked me if she was a  
8 part of the family -- no.

9 Q. Did you ever describe Kathy Mullinix to anybody?

10 A. Yes.

11 Q. How did you describe her?

12 A. Well, I described her relationship with my  
13 father, that she was my father's girlfriend.

14 Q. Is that the term you used, your "father's  
15 girlfriend"?

16 A. Probably, yes.

17 Q. Did you use any other term to describe her  
18 relationship with your father?

19 A. No.

20 Q. Did you invite Ms. Mullinix to family dinners?

21 A. Yes.

22 Q. Did you invite Ms. Mullinix to family  
23 celebrations?

24 A. Yes.

00093

1 Q. Did she attend family dinners and family

2 celebrations?

3 A. Yes.

4 Q. What types of celebrations did you invite her

5 to?

6 A. She came to Passover, she came to Thanksgiving,

7 I'm not sure about Bar Mitzvah.

8 Q. Why did you invite her?

9 A. She was with my father, and I knew it would be

10 important for her to be there with him.

11 Q. Did Ms. Mullinix attend any other family

12 functions?

13 A. I'm sure there were birthday parties --

14 Q. Were there funerals, things like that, that she

15 attended?

16 A. She attended my aunt's funeral in Iowa. I don't

17 remember any others.

18 Q. Based upon what you observed during the time

19 frame that you knew about the existence of their

20 relationship, did your father consider Kathy

21 part of the family?

22 MR. VARN: Objection.

23 A. I don't know. I can't read his mind. I don't

24 know.

00113

1 MR. VARN: Objection. You can answer

2 it.

3 A. I don't remember if he did. I don't remember.

4 Q. You testified earlier this morning that you

5 were aware that your father gave gifts to

6 Ms. Mullinix; is that right?

7 A. Mm-hmm.

8 Q. What gifts did he give her that you can recall?

9 A. Well, these are in part assumptions that they

10 were --

11 MR. VARN: Don't make assumptions.

12 Testify to what you know and remember.

13 A. Okay. I believe that he purchased some sort of

14 jewelry on the trip to Southeast Asia in 2003.

15 I did see the credit card receipt for that. I

16 was with him in that location and he did not

17 purchase anything for himself, so I believe he

18 did purchase her some jewelry for her at that

19 point.

20 Q. Any other items that you can recall?

21 A. I think -- no, nothing specific that I know

22 specifically that he paid for.

23 Q. Were you aware that your father purchased a ring

24 for Ms. Mullinix that she wore on her left hand

00116

1 A. It was an an engagement ring to my

2 sister-in-law.

3 Q. Do you recall seeing anything else during that

4 time frame?

5 A. No.

6 Q. Did your father discuss with you any purchases

7 that he made generally?

8 A. Not generally, unless it was a large purchase

9 and it affected me; he probably would mention

10 it but not the specifics.

11 Q. Give me an example of.

12 A. His car.

13 Q. The Saab?

14 A. Mm-hmm.

15 Q. Anything else that you can think of?

16 A. If he bought a new camera or something or a new

17 computer, he might have mentioned it in passing.

18 Q. Do you recall if he did mention those things in

19 passing?

20 A. I know that he bought a computer when he set

21 up an office at home after his surgery so that

22 he could work from home; he did mention that

23 one.

24 Q. Did he mention the computer purchase before he

00117

1 purchased it?

2 A. I don't remember. It's possible in passing we

3 talked about what he was getting, I don't know.

4 Q. When you spoke with your father during the last

5 few years of his life, what types of things did

6 you talk about?

7 A. We talked about my children, you know, sort of

8 daily things. But I would say mostly about our

9 children or the holidays, when we were going to

10 see each other, any trips.

11 Q. How long would you speak with your father during

12 these occasions?

13 A. If it was on the phone, briefly; if it was in

14 person, the length of a dinner.

15 Q. And how do you define a brief conversation over

16 the phone?

17 A. Five minutes, 10 minutes.

18 Q. And Ms. Mullinix also provided assistance to

19 members of your father's family, aside from your

20 family; is that correct?

21 A. Yes.

22 Q. Did she provide assistance to you at any point

23 during the time that you knew about her

24 relationship with your father?

00134

1 A. Well, she was obviously upset, as we are all  
2 were. I think -- I don't remember specifics,  
3 but I think she was acting appropriately to the  
4 situation. I know that doesn't mean much to you  
5 but she was concerned, she was upset, she was  
6 all those things that go along with that kind of  
7 a situation.

8 Q. After your father passed away, was your -- and  
9 specific to you -- was your trip cut short? Did  
10 you leave Mexico early?

11 A. Yes.

12 Q. When did you leave Mexico?

13 A. We left the next morning. He died early in the  
14 morning, so it was the end of that day, I don't  
15 remember what time.

16 Q. Who left at the same time, if anyone?

17 A. My immediate family and Kathy.

18 Q. Why did you and your family leave?

19 A. Kathy wanted to get back to Lexington. And,  
20 ultimately, we had to go back, so we decided to  
21 go then.

22 Q. When you say, "Kathy had to be back in  
23 Lexington," did she have a discussion with you  
24 about it?



00135

1 A. Yes.

2 Q. What did she say?

3 A. She said she wanted to be back in Lexington.

4 Q. Did she say why?

5 A. She wanted to be with his things.

6 Q. Was there anything about Ms. Mullinix's behavior

7 after your father died in that immediate time

8 frame that you didn't think was appropriate to

9 the situation?

10 A. No, not really.

11 Q. Is it fair to say that you were grieving?

12 A. Yes.

13 Q. Is it fair to say is that Kathy seemed to be

14 grieving also?

15 A. Yes.

16 Q. Why did you and your immediate family decide to

17 leave with Kathy to go home?

18 A. Well, we live in Boston and my brother lives in

19 Washington. So it was decided that we would

20 accompany Kathy back to Lexington because that

21 is where we were living, and my brother would

22 come back afterwards, after he took care of what

23 needed to be taken care of there, and then go

24 back to Washington.

00136

1 Q. When you came back to Boston, who was involved  
2 in making the funeral arrangements for your  
3 father?

4 A. Myself, my husband and Kathy.

5 Q. Was Kathy welcomed as part of that process?

6 A. Yes.

7 Q. Did Kathy do or say anything during the funeral  
8 arrangement process that you did not feel was  
9 appropriate to the situation?

10 A. I don't believe so.

11 Q. When you were at the airport in Mexico on your  
12 way to travel home, did you and Kathy speak?

13 A. I mean, we were all speaking. We were waiting  
14 in the airport, so I'm sure we spoke. We didn't  
15 have any -- we were just reflecting on the  
16 situation, I guess.

17 Q. Did Kathy Mullinix make any statements to you  
18 in the airport regarding her agreement with your  
19 father related to the issues that have become  
20 part of this complaint?

21 A. Not that I remember.

22 Q. Do you remember having a conversation with Kathy  
23 Mullinix at some point about those issues?

24 A. Yes.

00137

1 Q. And when was that?

2 A. On the airplane.

3 Q. What do you recall about that conversation?

4 A. As I remember it, she said, "Your father  
5 promised to pay for \$400,000 of renovations for  
6 the apartment."

7 Q. And what did you say?

8 A. I said something to the effect of "Don't worry  
9 about it, we will figure it out" in an attempt  
10 to -- she was distraught, we were all  
11 distraught, this was not the time to be --

12 Q. Do you remember your exact words?

13 A. I don't remember them exactly. To the best of  
14 my ability, that is what I said.

15 Q. Did you tell Kathy during that conversation that  
16 you certainly would want to do what your father  
17 wanted or words to that effect?

18 A. No.

19 Q. At any point did you tell Ms. Mullinix that you  
20 certainly would want to do what your father  
21 wanted or words to that effect?

22 A. I don't remember saying that.

23 Q. You don't remember saying that?

24 A. No.

00145

1 issue that is at issue in this case. And,  
2 unfortunately, he is not around to testify  
3 about it.

4 A. Can you restate the question.

5 Q. Do you need me to clarify it or do you not  
6 understand the question?

7 A. I've forgotten what the question was.

8 Q. I'll have the court reporter read back the  
9 question, and if you still need clarification,  
10 please ask me.

11 (Whereupon, the last question and  
12 answer were read back by the stenographer.)

13 A. I think I'm surprised because we discussed the  
14 renovations, not at length, but we discussed the  
15 renovations. And, you know, it might have come  
16 up that that was -- if there was an agreement,  
17 that that was the agreement.

18 Q. When did you discuss the renovations with your  
19 father?

20 A. I mean, as I said, they were not lengthy  
21 discussions, but there were discussions about  
22 the renovations. I saw the plans, there were  
23 some discussions about kitchen cabinets, that  
24 was, as I said, it was not.

00147

1 and Kathy?

2 A. It was not on a regular basis every month or so.

3 You know, it depended on the time of year, it

4 depended on a lot of different things.

5 Q. Based upon your recollection of first hearing

6 about the apartment, just so I'm clear, you

7 believe it was before there was a contract

8 signed for the apartment?

9 A. Yes.

10 Q. When did you next hear about the apartment?

11 A. I don't remember. I mean, there were mentions

12 of it -- I don't really remember.

13 Q. During the last year of your father's life, how

14 often did you speak with him about the

15 apartment?

16 A. I mean, not every time that we had a

17 conversation did it come up, and it was not a

18 constant subject of conversation, but it did

19 come up.

20 Q. Did your father talk to you about the financial

21 arrangements for purchasing the apartment?

22 A. No.

23 Q. Did Ms. Mullinix talk to you about the financial

24 arrangements for purchasing the apartment?

00149

1 purchased the apartment before you heard about

2 any discussions about renovations?

3 A. I honestly don't remember.

4 Q. When you first heard about discussions with the

5 renovations, what did you hear?

6 A. That she was renovating. She had to renovate

7 the windows and the air-conditioning, that was

8 required by the co-op association and the rest

9 of it was optional. But, you know, it needed

10 to be done to upgrade the apartment.

11 Q. Who were those discussions with?

12 A. Kathy, and my father might have been there

13 sometimes but not all the time.

14 Q. During the last year of his life, do you recall

15 speaking with your father about the renovations

16 and the plans to renovate the apartment?

17 A. Yes. I don't know if it was always with him, if

18 it was him separately, or both of them together,

19 but there were conversations where he was

20 present about the renovations.

21 Q. Did the subject of financial arrangements for

22 paying for the renovations come up prior to your

23 father's death?

24 A. No.

00151

1 checkbooks, bank statements, anything along

2 those lines?

3 A. No.

4 Q. After your father's death, in the context of --

5 strike that.

6 After your father's death, did you

7 obtain access to his bank records, his bank

8 statements, cancelled checks, check registers,

9 things of that nature.

10 A. Yes.

11 Q. During the discussions about the renovations,

12 is it fair to characterize the discussions as

13 regular discussions about the renovations?

14 A. "Regular" meaning on a regular pattern or in a

15 regular meeting? "Regular" meaning what?

16 Q. I'll clarify. Is it fair to say that it was a

17 frequent topic of discussion prior to your

18 father's death?

19 A. It came up. I mean, I would say that whenever

20 we saw each other, we discussed it; it wasn't

21 lengthy discussions, but the subject came up, I

22 would say.

23 Q. And when the subject came up, what was

24 discussed?

00152

1 A. It was mostly about the status of it, how things  
2 were going, what progress was made, what was  
3 going to be done, things of that nature.

4 Q. Did your father consult with you in the context  
5 of those renovations in any sort of professional  
6 capacity?

7 A. The only thing was when he came to the building  
8 that I work at to look at kitchen cabinets and  
9 to show me the plans, maybe once; that was not  
10 frequent.

11 Q. When did your father come into the showroom  
12 where you work at?

13 A. I don't remember the exact time, but it was  
14 sometime -- I don't remember the exact date.

15 Q. Do you remember the season?

16 A. No, I don't.

17 Q. And can you estimate how long prior to his  
18 death he came to your showroom to look at the  
19 cabinets?

20 A. I would guess it was a few months before that.

21 Q. Did he come alone?

22 A. No.

23 Q. Who did he come with? With Kathy?

24 A. Yes.



00155

1 death to the showroom where you work, did they,  
2 together, or did either of them separately, you  
3 know, make a visit to your showroom at any  
4 point?

5 A. No.

6 Q. After you showed your father and Ms. Mullinix  
7 the design center options for kitchens, what  
8 happened?

9 A. They left.

10 Q. Did they discuss with you ordering any kitchen  
11 cabinets?

12 A. There was the mention that they were expensive  
13 and that there was the possibility through Ray  
14 Warner that they could get the kitchen cabinets.  
15 There was a unit that they were building and  
16 that they might be able to kitchen cabinets that  
17 they might be able to get a better price on  
18 something because of the showroom purchase.

19 Q. And you knew who the Warners were?

20 A. Yes.

21 Q. What is your understanding of their relationship  
22 with your father and Ms. Mullinix

23 A. Ray and Ranne Warner, she is a developer, Ray  
24 Warner is an architect. They work, they're

00156

1 friends and have worked on certain investment

2 properties with my father.

3 Q. Prior to your father's death, were you aware

4 of any involvement between the Warners and

5 Ms. Mullinix?

6 A. I knew that Kathy had met with Ray Warner to

7 work on the architectural plans for the

8 apartment.

9 Q. And how did you know that?

10 A. I was told they were meeting with him.

11 Q. Who told you?

12 A. Kathy or my father, I don't recollect who.

13 Q. Was it your understanding that they were meeting

14 with Ray Warner together?

15 A. I don't know the specifics, it's possible.

16 Q. At some point -- strike that.

17 Prior to your father's death, did you

18 have any information as to who paid Ray Warner

19 for her services?

20 A. No.

21 Q. After your father's death?

22 A. Death did you obtain any information about what

23 mid Ray Warner for her services.

24 A. Yes.

00157

1 Q. Who?

2 A. My father. There was a they can Tom Ray worner

3 and I don't know that is for those services but

4 there is a document with that check for

5 something.

6 Q. Have you reviewed that check?

7 A. Yes.

8 MS. DINEEN JERRETT: Can you mark that

9 as Exhibit No. 6.

10 (Exhibit No. 6, Photocopy of Check No.

11 6572 to Raynor Warner for \$1787 together with

12 correspondence of 7-11-03 was marked for

13 identification.)

14 Q. Now, I've given you what's been marked as

15 Exhibit No. 6 to the deposition and I'll ask

16 that you review it and if you recognize that

17 document.

18 A. Yes.

19 Q. What is it?

20 A. It's a copy of a check and an invoice for Raynor

21 Warner for preliminary meetings regarding 1050

22 5th Avenue.

23 Q. The invoice from Ray Warner is addressed to

24 whom?

00168

1 actually had a discussion with me about it at

2 the time.

3 Q. Hearing the testimony yesterday on that subject,

4 was that subject familiar to you?

5 A. Yes.

6 Q. Do you recall -- have you and your brother

7 spoken about the subject of that issue at any

8 point prior to yesterday?

9 A. Yes.

10 Q. When?

11 A. I don't remember an exact date, just in

12 reference to the case.

13 Q. And what did our brother tell you about it?

14 A. He told me what he testified to yesterday.

15 Q. Can you --

16 A. He told me that he had a discussion with Kathy

17 about the reason to purchase the Apartment and

18 that it was suggested, you know, that her son

19 thought it would be a good investment to

20 purchase it there.

21 Q. Do you recall anything else about your

22 conversation with your brother on that topic?

23 A. No.

24 Q. At any point prior to your father's death, did

# **EXHIBIT D**



FannieMae

MITCHELL, MAXWELL &amp; JACKSON, INC.

## Individual Cooperative Interest Appraisal Report

MULLINIX v. BOGORAD

File No. P601535

SUBJECT	Property Address 1050 FIFTH AVENUE		City NEW YORK	State NY	Zip Code 10028							
	Legal Description BLOCK: 1498 LOT:01		County NEW YORK	Unit No. 2D								
	Project Name/Phase No. 1050 5TH AVE INC.		Map Reference 2, D-15	Census Tract 0150.01								
	Borrower N/A		Current Owner MULLINIX v. BOGORAD-GROSS									
NEIGHBORHOOD	Current Occupant (Indicate One): <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant (Market Rent) <input type="checkbox"/> Tenant (Regulated Rent) <input type="checkbox"/> Vacant											
	Data Source INSPECTION/CONTRACT											
	Sales Price \$ N/A Date of Sale N/A		Description and \$ amount of loan charges/concessions to be paid by seller UNKNOWN									
	Lender/Client SULLIVAN & WORCESTER LLP		Address ONE POST OFFICE SQUARE, ZONE 10, BOSTON, MA 02109									
SITE	Appraiser CHRISTOPHER DEVINE		Address 546 5TH AVENUE, 9TH FLR, NEW YORK NY 10036									
	Location <input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Rural	Predominant cooperative occupancy <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant (0-5%) <input type="checkbox"/> Vacant (over 5%)	Cooperative housing PRICE \$ (000) 150 Low 15 High 100+	Predominant condominium occupancy <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Tenant <input type="checkbox"/> Vacant (0-5%) <input type="checkbox"/> Vacant (over 5%)	Condominium housing PRICE \$ (000) 150 Low NEW High 100+							
	Built up <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25-75% <input type="checkbox"/> Under 25%	Growth rate <input checked="" type="checkbox"/> Rapid <input type="checkbox"/> Stable <input type="checkbox"/> Slow	Property values <input checked="" type="checkbox"/> Increasing <input type="checkbox"/> Stable <input type="checkbox"/> Declining	Demand/supply <input checked="" type="checkbox"/> Shortage <input type="checkbox"/> In balance <input type="checkbox"/> Over supply	Marketing time <input checked="" type="checkbox"/> Under 3 mos. <input type="checkbox"/> 3-6 mos. <input type="checkbox"/> Over 6 mos.							
	Present land use %: One Family 2, 2-4 Family 3, Apartments 10, Condominium 5, Cooperative 70, Commercial 10, Industrial 0, Other 0		Land use change: <input checked="" type="checkbox"/> Not likely <input type="checkbox"/> Likely <input type="checkbox"/> In process to 100% BUILT UP									
	Note: Race and the racial composition of the neighborhood are not appraisal factors.											
	Neighborhood boundaries and characteristics: THE SUBJECT IS LOCATED IN THE UPPER EAST SIDE NEIGHBORHOOD OF MANHATTAN. THIS AREA IS BOUNDED BY 96TH STREET TO THE NORTH, 59TH STREET TO THE SOUTH, CENTRAL PARK TO THE WEST AND THE EAST RIVER TO THE EAST.											
	Factors that affect the marketability of the properties in the neighborhood (proximity to employment and amenities, employment stability, appeal to market, etc.):											
	THE AREA IS PROXIMATE TO EMPLOYMENT CENTERS, HOUSES OF WORSHIP, LOCAL SHOPPING AND AMENITIES. PROPERTIES ARE GENERALLY WELL MAINTAINED. NEIGHBORHOOD TRENDS ARE WELL ESTABLISHED. MARKETABILITY IS RATED GOOD.											
	Market conditions in the subject neighborhood (including support for the above conclusions related to the trend of property values, demand/supply, and marketing time -- such as data on competitive properties for sale in the project and neighborhood, description of the prevalence of sales and financing concessions, etc.):											
	MARKET CONDITIONS IMPROVED FROM 1994 TO 12/2004 AT A RATE OF 5-20% PER ANNUM. CURRENT DATA INDICATES PRICE STABILITY. SUPPLY AND DEMAND ARE GENERALLY IN BALANCE. MARKETING TIME FOR APPROPRIATELY PRICED PROPERTIES IS 1-3 MONTHS. MOST SALES ARE EITHER CONVENTIONALLY FINANCED OR ALL CASH. INTEREST BUYDOWNS AND SALES CONCESSIONS ARE NOT COMMON.											
PROJECT IMPROVEMENTS	Specific zoning classification and description R-10 RESIDENTIAL PERMITTED		Topography LEVEL ON GRADE									
	Zoning compliance <input checked="" type="checkbox"/> Legal <input type="checkbox"/> Legal nonconforming (Grandfathered use) <input type="checkbox"/> Illegal <input type="checkbox"/> No zoning		Size TYPICAL									
	Highest & best use as improved <input checked="" type="checkbox"/> Present use <input type="checkbox"/> Other use (explain)		Density TYPICAL									
	Utilities Public <input checked="" type="checkbox"/> Other	Off-site improvements Type Public Private	View AVERAGE									
	Electricity <input checked="" type="checkbox"/>	Street MACADAM <input checked="" type="checkbox"/>	Drainage APPEARS ADEQUATE									
	Gas <input checked="" type="checkbox"/>	Curb/gutter CONCRETE <input checked="" type="checkbox"/>	Apparent easements NONE NOTED									
	Water <input checked="" type="checkbox"/>	Sidewalk CONCRETE <input checked="" type="checkbox"/>	FEMA Special Flood Hazard Area <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
	Sanitary sewer <input checked="" type="checkbox"/>	Street lights OVERHEAD <input checked="" type="checkbox"/>	FEMA Zone C Map Date 07/94									
	Storm sewer <input checked="" type="checkbox"/>	Alley NONE <input type="checkbox"/>	FEMA Map No. 360497-0032B									
	Comments (apparent adverse easements, encroachments, special assessments, slide areas, illegal or legal nonconforming zoning use, etc.): NO ADVERSE BASEMENTS, ENCROACHMENTS, OR CONDITIONS OBSERVED. SMSA: 5600											
COMMENTS	GENERAL DESCRIPTION		EXTERIOR DESCRIPTION									
	No. of Units 90	Existing/Proposed EXISTING	Total No. Parking NONE	Exterior Walls BRICK								
	No. of Buildings 1	Age (Yrs.) 1950	Ratio (spaces/units) N/A	Roof Surface TAR								
	No. of Stories 20	Condition GOOD	Type of Parking N/A	Window Type DBL-HUNG								
	No. of Elevator(s) 4	If Conversion, Orig. use RENTAL	Guest Parking (Y/N) NONE									
	Project Type: <input checked="" type="checkbox"/> Primary Residence <input type="checkbox"/> Second Home or Recreational <input type="checkbox"/> Other (Describe)		Does the cooperative project include or own any commercial units? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe units 1 GARAGE									
	Condition of the project, depreciation, repairs needed, remodeling/modernization, quality of construction, unit mix, appeal to market, etc.:		PROJECT APPEARS TO BE PROPERLY MAINTAINED. NO DEFERRED MAINTENANCE NOTED.									
	Describe the project amenities, security features, recreational facilities, etc.:		TYPICAL COMMON ELEMENTS, DOORMAN.									
	Are the units and project amenities completed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		If No, describe status of completion: N/A									
	Finished area above grade contains: 5.5 Rooms; 2 Bedroom(s); 2 Bath(s); 1,698 +/- Square Feet of Gross Living Area For Unit		Finished area below grade contains: 0 Rooms; 0 Bedroom(s); 0 Bath(s); 0 Square Feet of Gross Living Area For Unit									
SUBJECT UNIT	GENERAL DESCRIPTION		HEATING		KITCHEN EQUIP.		AMENITIES		CAR STORAGE		INSULATION	
	Floor No. 15	Type STEAM	Refrigerator <input checked="" type="checkbox"/>	Fireplace(s) #	None <input checked="" type="checkbox"/>	Roof <input checked="" type="checkbox"/>						
	No. of Levels 1	Fuel OIL	Range/Oven <input checked="" type="checkbox"/>	Patio	Garage <input checked="" type="checkbox"/>	Ceiling <input checked="" type="checkbox"/>						
	Interior Materials/Condition	Condition AVG	Disposal	Balcony	No. of Cars	Walls <input checked="" type="checkbox"/>						
	Flooring HARDWOOD/VGD	COOLING	Dishwasher <input checked="" type="checkbox"/>	Deck	Open	Floor <input checked="" type="checkbox"/>						
	Walls GYPSUM/VGD	Central UNITS	Fan/Hood <input checked="" type="checkbox"/>	Porch	No. of Cars	None <input checked="" type="checkbox"/>						
	Bath Floor MARBLE/VGD	Other N/A	Microwave <input checked="" type="checkbox"/>	Terrace	Parking Space No. N/A	Unknown <input checked="" type="checkbox"/>						
	Bath Wainscot MARBLE/VGD	Condition AVG	Washer/Dryer <input checked="" type="checkbox"/>		Assigned/Owned N/A							
	Condition of the unit, depreciation, repairs needed, quality of construction, remodeling/modernization, additional features (special energy efficient items, etc.):											
	THE SUBJECT IS PHYSICALLY AND FUNCTIONALLY ADEQUATE 'AS IS.' NO MAJOR REPAIRS OR MODERNIZATIONS ARE NECESSARY. THE SUBJECT IS IN VERY GOOD CONDITION OVERALL WITH RENOVATED KITCHEN AND BATHS.											
Adverse environmental conditions (such as, but not limited to, hazardous wastes, toxic substances, etc.) present on the site, in the project improvements, in the unit, or in the immediate vicinity of the subject property: NONE NOTED.												

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MITCHELL, MAXWELL &amp; JACKSON, INC.

MULLINIX v. BOGORAD

File No. P601535

**Individual Cooperative Interest Appraisal Report**

The number of shares attributable to the unit: 610 Monthly Maintenance Fee (or Monthly Assessment) \$ 1,859.73  
 Monthly Maintenance Fee (or Monthly Assessment Unit Charge) \$ 1,859.73 per mo. x 12 = \$ 22,317 per yr.  
 Annual Maintenance Fee (or assessment charge) divided by the square feet of gross living area for the subject unit = \$ 13.14  
 Note the *pro rata* share of the project blanket financing that is attributable to the unit: N/A

Note the *pro rata* share of each lien that is attributable to the unit: N/A  
 Compared to other competitive projects of similar quality and design, the subject unit charge appears: ☐ High ☒ Typical ☐ Low  
 Comment on compatibility to other projects in the market area: TYPICAL FOR THE MARKET.

Utilities included in unit charge: ☐ None ☒ Heat ☐ Air Conditioning ☐ Electricity ☐ Gas ☒ Water ☒ Sewer  
 Comment on compatibility to other projects in the market area: TYPICAL FOR MARKET

Note any fees, other than regular monthly maintenance fees (or monthly assessments, such as special assessments, etc.), for use of facilities and comment on compatibility to other projects in the market area: NONE NOTED.

Is the project subject to ground rent? ☐ Yes ☒ No If yes, \$ N/A per year and describe terms:

**INSIGNIA RESIDENTIAL GROUP (212) 350-2821**

Cooperative Project Management: ☒ Management Agent (Identify) # SEE ABOVE ☐ Sponsor/Developer ☐ Cooperative Board  
 Quality of management and its enforcement of Rules and Regulations based on general appearance of project appears: ☒ Adequate ☐ Inadequate  
 Information known to the appraiser about the project that would affect marketability (if none, so state): NONE KNOWN

THE APPRAISER'S DATA SOURCE(S) FOR THE FOLLOWING COOPERATIVE PROJECT INFORMATION IS THE: ☒ MANAGEMENT AGENT,  
☐ COOPERATIVE BOARD, ☐ SPONSOR/DEVELOPER, AND/OR ☒ OTHER (DESCRIBE) COOPERATIVE DATA CORP  
 IDENTIFY THE DATA SOURCE(S) BELOW BY NAME, TITLE, COMPANY, ADDRESS AND TELEPHONE NUMBER:

**INSIGNIA RESIDENTIAL GROUP (212) 350-2821**

**COOPERATIVE DATA CORP (212) 843-0777**

Number of shares issued and outstanding for the Cooperative Corporation: 62,695

Is the Sponsor or Builder/Developer in Control of the Cooperative Corporation? ☐ Yes ☒ No

Is the Sponsor or Builder/Developer offering any types of sales or financing concessions (such as, a maintenance fee rebate or credit, etc.) with the transfer of units in the project? ☐ Yes ☒ No If Yes, describe: N/A

Are any of the project facilities leased to or by the Cooperative Corporation? ☐ Yes ☒ No If yes, describe which facilities and note any fees for their use: N/A

Is the subject project the recipient of any tax abatements or exemptions? ☐ Yes ☒ No If Yes, note their remaining term, provisions for escalation of real estate taxes, and dollar amount: NONE NOTED

Are any of the units in the project subject to a stock transfer fee (such as, waiver of option fees, flip taxes, etc.)? ☐ Yes ☒ No If Yes, describe: N/A

How many owners of units in the project are two or more months delinquent in the payment of their financial obligations to the Cooperative Corporation? UNKNOWN  
 Does any single entity (including the same individual, investor group, partnership, or corporation, as well as the developer or sponsor) own more than 10% of the stock or shares in the Cooperative Corporation and the related occupancy rights? ☐ Yes ☒ No If Yes, describe: N/A

**PROJECT BLANKET FINANCING**

Lien Priority	FIRST	SECOND	OTHER (N/A)
Lien Type (Mortgage, Line of Credit, Wraparound, Etc.)	<u>NO MORTGAGE</u>	<u>N/A</u>	
Mortgage Balance	\$ <u></u>	\$ <u></u>	\$ <u></u>
Balloon Mortgage (Y/N)	<u></u>	<u></u>	<u></u>
Remaining Term	<u></u>	<u></u>	<u></u>
Monthly Payment	\$ <u></u>	\$ <u></u>	\$ <u></u>
Interest Rate	<u></u> %	<u></u> %	<u></u> %
Fixed/Variable Rate	<u></u>	<u></u>	<u></u>
Lienholder	<u></u>	<u></u>	<u></u>

**PROJECT OCCUPANCY STATUS**

Unit Ownership and Occupancy	# of Units	% of Project
Owner Occupied	90	100.00
Sponsor/Developer-Vacant	0	0.00
Sponsor/Developer-Tenant Occupied (Market Rent)	0	0.00
Sponsor/Developer-Tenant Occupied (Regulated Rent)	0	0.00
Investor-Vacant	0	0.00
Investor-Tenant Occupied (Market Rent)	0	0.00
Investor-Tenant Occupied (Regulated Rent)	0	0.00
Total	90	100.00

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MITCHELL, MAXWELL &amp; JACKSON, INC.

MULLINIX v. BOGORAD

## Individual Cooperative Interest Appraisal Report

File No. P601535

THE SALES PRICE REPORTED FOR THE SUBJECT PROPERTY AND THE COMPARABLE SALES IN THE SALES COMPARISON ANALYSIS ADJUSTMENT GRID SHOWN BELOW DO NOT INCLUDE THE PRO RATA SHARE OF THE BLANKET MORTGAGE(S) ON THE REAL ESTATE.

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Address and Unit #	1050 FIFTH AVENUE 15B	1050 FIFTH AVENUE SC	1050 FIFTH AVENUE 9/10A	45 EAST END AVENUE 14G/H
Project Name	1050 5TH AVE INC.	1050 5TH AVE INC.	1050 5TH AVE INC.	EAST END OWNERS
Proximity to Subject	SAME BUILDING	SAME BUILDING	SAME BUILDING	.6 MILE
Sales Price	\$ N/A	\$ 1,845,000	\$ 1,695,000	\$ 1,740,000
Price/Gross Liv. Area	\$ 0.00	\$ 1,396.67	\$ 1,471.35	\$ 1,111.82
Data and/or Verification Sources	INSPECTION	LISTING AGT/BROKER	LISTING AGT/BROKER	INSPECTION/LISTING AGT
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing Concessions	NONE	NONE	NONE	NONE
Date of Sale/Time	12/05 Cld	NO ADJ	11/05 Cld	NO ADJ
Location	VERY GOOD	SIMILAR	SIMILAR	SIMILAR
View	GOOD	SIMILAR	SIMILAR	SIMILAR
Floor Location	15 FL	5 FL	9/10 FL	14 FL
Monthly Assessment	1,859.73	1,391.00	1,319.00	2,145.76
Project Amenities (Rec. Facilities, etc.)	TYPICAL	TYPICAL	TYPICAL	TYPICAL
Project Security Features	DOORMAN	DOORMAN	DOORMAN	DOORMAN
Design and Appeal	POSTWAR/AVG	POSTWAR/AVG	POSTWAR/AVG	POSTWAR/AVG
Age	1960	1960	1960	1951
Condition	VERY GOOD	SIMILAR	INF(10%)	SIMILAR
Remodeling (Kitchen, Baths, etc.)	RENO KITCHEN/ BATHS	SIM KITCHEN/ BATHS	INF KITCHEN/ BATHS	SIM KITCHEN/ BATHS
Above Grade	Total Bdrms Baths 5.5 2.0	Total Bdrms Baths 4.0 2.0	Total Bdrms Baths 5.0 2.0	Total Bdrms Baths 6.0 2.0
Room Count and Gross Living Area	1698 +/- Sq.Ft.	1321 +/- Sq.Ft.	1152 +/- Sq.Ft.	1565 +/- Sq.Ft.
Below Grade	NONE	NONE	NONE	NONE
Functional Utility	SIMPLEX/GOOD	SIMPLEX/GOOD	DUPLEX/GOOD	SIMPLEX/GOOD
Heating/Cooling	STEAM/UNITS	SIMILAR	SIMILAR	SIMILAR
Energy Efficient Items	PER CODE	PER CODE	PER CODE	PER CODE
Car Storage	NONE	NONE	NONE	NONE
Balcony, Patio, Fireplace(s), etc.	NONE	NONE	NONE	NONE
Net Adj. (total)	\$ 408,450	\$ 587,100	\$ 235,300	\$ 2,253,450
Adjusted Sales Price of Comparable	\$ 2,253,450	\$ 2,282,100	\$ 1,975,300	

Comments on Sales Comparison (including the subject property's compatibility to other cooperative units in the neighborhood, etc.): SEE ADDENDUM AND ADDITIONAL COMPARABLE(S).

ITEM	SUBJECT	COMPARABLE NO. 1	COMPARABLE NO. 2	COMPARABLE NO. 3
Date, Price and Data Source for prior sales within year of appraisal	NONE NOTED IN THREE YEARS MGT AGENT	NONE NOTED IN THREE YEARS MGT AGENT	NONE NOTED IN THREE YEARS MGT AGENT	NONE NOTED IN THREE YEARS MGT AGENT

Analysis of any current agreement of sale, option, or listing of the subject property and analysis of any prior sales of subject and comparables within one year of the date of appraisal:  
No listing, agreement, or option was revealed on the subject property during the investigation.

INDICATED VALUE BY SALES COMPARISON APPROACH ..... \$ 2,100,000

INDICATED VALUE BY INCOME APPROACH (Attach, if applicable) ..... \$ N/A

INDICATED VALUE BY COST APPROACH (Attach, if applicable) ..... \$ N/A

This appraisal is made ☒ "as is" ☐ subject to the repairs, alterations, inspections, or conditions listed below ☐ subject to completion per plans and specifications.

Conditions of Appraisal: THIS APPRAISAL IS MADE 'AS IS' AND IS INTENDED FOR MATRIMONIAL PURPOSES ONLY.

Final Reconciliation: SEE ATTACHED ADDENDUM.

The purpose of this appraisal is to estimate the market value of the cooperative interest that is the subject of this report (which is the equity interest in the cooperative shares exclusive of the project's blanket financing), based on the above conditions and the certification, contingent and limiting conditions, and market value definition that are stated in the attached Freddie Mac Form 439/Fannie Mae Form 1004B (Revised 06/93).

I (WE) ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE COOPERATIVE INTEREST (THE COOPERATIVE SHARES OR OTHER EVIDENCE OF AN OWNERSHIP INTEREST IN THE COOPERATIVE CORPORATION AND THE ACCOMPANYING OCCUPANCY RIGHTS) THAT IS THE SUBJECT OF THIS REPORT, AS OF 03/31/2006

(WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE \$ 2,100,000. I (WE) CERTIFY THAT THE PRO RATA SHARE OF

THE BLANKET MORTGAGE(S) ON THE REAL ESTATE HAS NOT BEEN ADDED TO THE MARKET VALUE ESTIMATE OF THE COOPERATIVE INTEREST.

APPRAISER:

Signature Christopher Devine

Name CHRISTOPHER DEVINE

Date Report Signed 04/06/2006

State Certification # 45-39270

Or State License #

Signature Steven K Nobel

Name STEVEN KNOBEL

Date Report Signed 04/06/2006

State Certification # 45-18006

Or State License #

☐ Did ☒ Did Not

Inspect Property

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MITCHELL, MAXWELL & JACKSON, INC.

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# Individual Cooperative Interest Appraisal Report

MITCHELL, MAXWELL & JACKSON, INC.

MULLINIX v. BOGORAD

THE SALES PRICE REPORTED FOR THE SUBJECT PROPERTY AND THE COMPARABLE SALES IN THE SALES COMPARISON ANALYSIS ADJUSTMENT GRID SHOWN BELOW DO NOT INCLUDE THE PRO RATA SHARE OF THE BLANKET MORTGAGE(S) ON THE REAL ESTATE.

SALES COMPARISON ANALYSIS

INCLUDE THE PRO RATA SHARE OF THE BLANKET MORTGAGE(S) ON THE REAL ESTATE.																
ITEM		SUBJECT		COMPARABLE NO. 4				COMPARABLE NO. 5				COMPARABLE NO. 6				
Address and 1050 FIFTH AVENUE				870 FIFTH AVENUE				1050 FIFTH AVENUE				NOT USED				
Unit # 15B				6F				8C								
Project Name		1050 5TH AVE INC.		870 FIFTH AVE CORP				1050 5TH AVE INC.								
Proximity to Subject				8 MILE				SAMB BUILDING								
Sales Price		\$ N/A		\$ 2,100,000				\$ 1,699,000								
Price/Gross Liv. Area		\$ 0.00 /sq		\$ 1,574.21 /sq				\$ 1,286.15 /sq				\$ /sq				
Data and/or Verification Sources		INSPECTION		LISTING AGT/BROKER				LISTING BROKER								
VALUE ADJUSTMENTS		DESCRIPTION		DESCRIPTION		+ (-) \$ Adjustment		DESCRIPTION		+ (-) \$ Adjustment		DESCRIPTION		+ (-) \$ Adjustment		
Sales or Financing Concessions				NONE KNOWN				NONE KNOWN								
Date of Sale/Time				07/05 Cisd 2%		42,000		02/06 Listing 5%		-84,950						
Location		VERY GOOD		SUP(10%)		-210,000		SIMILAR								
View		GOOD		S INF (5%)		105,000		S INF (5%)		84,950						
Floor Location		15 FL		6 FL		+80,000		8 FL		+60,000						
Monthly Assessment		1,859.73		2,029.00		+28,400		1,441.00		NO ADJ						
Project Amenities (Rec. Facilities, etc.)		TYPICAL		TYPICAL				TYPICAL								
Project Security Features		DOORMAN		DOORMAN				DOORMAN								
Design and Appeal Age		POSTWAR/AVG 1960		POSTWAR/AVG 1949		NO ADJ		POSTWAR/AVG 1960								
Condition		VERY GOOD		SIMILAR				S INF(5%)		84,950						
Remodeling (Kitchen, Baths, etc.)		RENO KITCHEN/ BATHS		SIM KITCHEN/ BATHS				INF KITCHEN/ BATHS		+75,000						
Above Grade Room Count and Gross Living Area		Total : Bdms : Baths : 5.5 : 2.0 : 2.0		Total : Bdms : Baths : 5.0 : 2.0 : 2.0		NO ADJ		Total : Bdms : Baths : 4 : 2 : 2.0		NO ADJ		Total : Bdms : Baths :		Sq.Ft. 0		
Below Grade		NONE		NONE		218,400		1321 +/- Sq.Ft.		226,200				Sq.Ft. 0		
Functional Utility Heating/Cooling		SIMPLEX/GOOD STEAM/UNITS		SIMPLEX/GOOD SIMILAR				SIMPLEX/GOOD SIMILAR								
Energy Efficient Items		PER CODE		PER CODE				PER CODE								
Car Storage Balcony, Patio, Fireplace(s), etc.		NONE NONE NONE NONE		NONE NONE NONE NONE				NONE NONE NONE NONE								
Net Adj. (total)				x + - = \$ 263,800		x + - = \$ 263,800		x + - = \$ 446,150		x + - = \$ 446,150		x + - = \$ 0		0		
Adjusted Sales Price of Comparable				\$ 2,363,800		\$ 2,363,800		\$ 2,145,150		\$ 2,145,150		\$ 0		0		
Comments on Sales Comparison (including the subject property's compatibility to other cooperative units in the neighborhood, etc.): THE ABOVE WERE PROVIDED AS ADDITIONAL SUPPORT FOR THE FINAL VALUE ESTIMATE DERIVED EARLIER IN THIS REPORT.																

MITCHELL, MAXWELL & JACKSON, INC.  
Request For Cooperative Project Information

MULLINIX v. BOGORAD  
File No. P601535

To: _____			
Address: _____			
Individual Loan Information is as follows:			
Borrower(s) Name: <u>N/A</u>			
Cooperative Project Name: <u>1050 5TH AVE INC.</u>			
Property Address and Unit #: <u>1050 FIFTH AVENUE</u>			
<p>This form was developed to facilitate the collection of cooperative project information for appraisers and lenders by standardizing the reporting format because the availability of financing often depends on the management agent's, the cooperative board's, or the project sponsor's/developer's willingness to provide requested information (for underwriting consideration) in a timely manner. Either the management agent, the cooperative board, or the project sponsor/developer can complete this form.</p> <p>Please complete this form by answering all questions or by indicating "Unknown" or "N/A" (Not Applicable). Do not limit your responses to the spaces provided; attach an addendum, if necessary. If you have any questions or need any assistance, please contact the requestor indicated below. This form includes the Cooperative Project information that most lenders, investors, and mortgage insurers require for evaluating project eligibility. We appreciate your cooperation in providing the requested information.</p>			
Requestor (Signature): _____			
Name: _____			
Title: _____			
Company Name: _____			
Address: _____			
Telephone Number: _____			
<p>How many units in the project have been sold within the last year? _____ Attach list of comparable sales for the subject unit indicating, at least, the following: Address, Number of Shares, Contract Date, Closing or Settlement Date, Seller, Lender, Size, Condition, and Monthly Maintenance Fees.</p> <p>Does the cooperative project include or own any commercial units? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, describe units <u>1 GARAGE.</u></p> <p>Number of shares issued and outstanding for the Cooperative Corporation: <u>62,695</u></p> <p>Is the Sponsor or Builder/Developer in Control of the Cooperative Corporation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Is the Sponsor or Builder/Developer offering any types of sales or financing concessions (such as, a maintenance fee rebate or credit, etc.) with the transfer of units in the project? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe: <u>N/A</u></p>			
Are any of the project facilities leased to or by the Cooperative Corporation? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, describe which facilities and note any fees for their use: <u>N/A.</u>			
Is the subject project the recipient of any tax abatements or exemptions? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, note their remaining term, provisions for escalation of real estate taxes, and dollar amount: <u>NONE NOTED</u>			
Are any of the units in the project subject to a stock transfer fee (such as, waiver of option fees, flip taxes, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe: <u>N/A</u>			
How many owners of units in the project are two or more months delinquent in the payment of their financial obligations to the Cooperative Corporation? <u>UNKNOWN</u>			
Does any single entity (including the same individual, investor group, partnership, or corporation, as well as the developer or sponsor) own more than 10% of the stock or shares in the Cooperative Corporation and the related occupancy rights? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe: <u>N/A</u>			
<b>PROJECT BLANKET FINANCING</b>			
Lien Priority	FIRST	SECOND	OTHER ( <u>N/A</u> )
Lien Type (Mortgage, Line of Credit, Wraparound, Etc.)	<u>NO MORTGAGE</u>	<u>N/A</u>	
Mortgage Balance	\$ _____	\$ _____	\$ _____
Balloon Mortgage (Y/N)	_____	_____	_____
Remaining Term	_____	_____	_____
Monthly Payment	\$ _____	\$ _____	\$ _____
Interest Rate	_____ %	_____ %	_____ %
Fixed/Variable Rate	_____	_____	_____
Lienholder	_____	_____	_____
<b>PROJECT OCCUPANCY STATUS</b>			
Unit Ownership and Occupancy	# of Units	% of Project	
Owner Occupied	90	100.00	
Sponsor/Developer-Vacant	0	0.00	
Sponsor/Developer-Tenant Occupied (Market Rent)	0	0.00	
Sponsor/Developer-Tenant Occupied (Regulated Rent)	0	0.00	
Investor-Vacant	0	0.00	
Investor-Tenant Occupied (Market Rent)	0	0.00	
Investor-Tenant Occupied (Regulated Rent)	0	0.00	
<b>Total</b>	<b>90</b>	<b>100.00</b>	
<p>I, THE UNDERSIGNED, AS AN AUTHORIZED REPRESENTATIVE OF THE (INDICATE ONE): <input type="checkbox"/> MANAGEMENT AGENT, <input type="checkbox"/> COOPERATIVE BOARD, <input type="checkbox"/> SPONSOR/DEVELOPER, OR <input type="checkbox"/> OTHER (DESCRIBE) _____, CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE ABOVE INFORMATION AND STATEMENTS ON THIS FORM (AND THE ATTACHMENTS, IF APPLICABLE) ARE TRUE AND CORRECT.</p> <p>Signature of Authorized Representative _____</p> <p>Name of Authorized Representative _____</p> <p>Name of Organization _____</p> <p>Address _____</p> <p>Telephone Number _____</p> <p>Date _____</p>			

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MITCHELL, MAXWELL & JACKSON INC.

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## ADDENDUM

Borrower: N/A	File No.: P801535
Property Address: 1050 FIFTH AVENUE	Case No.: MULLINIX v. BOGORAD-GROSS
City: NEW YORK	State: NY
Lender: SULLIVAN & WORCESTER LLP	Zip: 10028

## HISTORICAL BACKGROUND:

THE MID 1980'S SAW A MASSIVE INCREASE IN HOUSING SUPPLY DRIVEN BY A STRONG ECONOMY AND GENEROUS TAX INCENTIVES. THE END OF THE DECADE BROUGHT CHANGES IN THE TAX LAWS AFFECTING REAL ESTATE INVESTMENTS, THE STOCK MARKET CRASH IN 1987, THE GULF WAR AND A WEAKENING OF THE ECONOMY. THE COMBINATION OF THESE FACTORS CAUSED MARKET WIDE RECESSION AND A PERIOD OF DECLINING VALUES. FROM 1988 TO 1992 THE REAL ESTATE MARKET WENT THROUGH A RE-ADJUSTMENT. NEW CONSTRUCTION NEARLY DISAPPEARED AND VALUES DECLINED 10 -20% PER ANNUM WHILE THE MARKET STRUGGLED TO FIND EQUILIBRIUM.

DECLINING INTEREST RATES, A LACK OF NEW INVENTORY AND THE GENERAL RECOVERY OF THE LOCAL AND NATIONAL ECONOMIES STABILIZED THE MARKET BETWEEN 1993 AND 1994. GENERAL MARKET CONDITIONS STEADILY IMPROVED UNTIL MID 1998 WITH VARIOUS SUB-SECTORS OF THE HOUSING MARKET RECOVERING IN WAVES. THE EPICENTER OF THE RECOVERY WAS THE ARCHITECTURALLY APPEALING, OWNER OCCUPIED, FAMILY SIZED APARTMENTS IN PRIME LOCATIONS. A MITCHELL, MAXWELL & JACKSON, INC. STUDY OF OVER 1000 RE-SALES BETWEEN 1990 AND MID 1998 INDICATES THAT THE RATE OF APPRECIATION DURING THIS PERIOD WAS BETWEEN 5% AND 25% PER ANNUM. BY THE END OF THIS PERIOD RECOVERY REACHED NEARLY ALL PROPERTY TYPES AND LOCATIONS IN THE BOROUGH OF MANHATTAN SOUTH OF 96-125 STREETS. DURING THIS ERA MARKETING TIME DECLINED TO BETWEEN 1 AND 3 MONTHS AND SHORTAGES OF INVENTORY WERE NOTED. SALES ACTIVITY WAS AT OR ABOVE ITS HIGHEST LEVEL SINCE THE MID 1980'S AND THE AVERAGE PRICE OF A NEW YORK APARTMENT BROKE THROUGH THE 1980'S HIGH AVERAGE. THE RELATIVELY FEW NEW CONSTRUCTION OWNER OCCUPIED RESIDENTIAL PROJECTS INITIATED FROM 1993 TO MID 1998 WERE VERY SUCCESSFUL AND MANY SOLD OUT WELL AHEAD OF EXPECTATIONS.

FROM 1994 TO MID 1998 PROPERTY VALUES INCREASED CITYWIDE DRIVEN BY IMPROVING ECONOMIC CONDITIONS. INCREASES IN RESIDENTIAL REAL ESTATE VALUES WERE 10 - 20% PER YEAR DURING THIS PERIOD OF GROWTH. GLOBAL CREDIT SHORTAGES DEVELOPED IN THE THIRD QUARTER OF 1998 AND THE MARKET LEVELED OFF. THE FEDERAL RESERVE BANK MADE INTEREST RATE REDUCTIONS IN THE FALL OF 1998 WHICH RESTARTED THE CAPITAL FLOW. THE CAPITAL AND REAL ESTATE MARKETS REACTED ACCORDINGLY IN THE FOURTH QUARTER OF 1998 AND PRICE APPRECIATION RESUMED AND SPREAD TO ALL AREAS OF MANHATTAN AND THE SURROUNDING SUB-MARKETS. BASED ON PAIRED SALES UTILIZED TO DEVELOP THE MMJ RE-SALE INDICES, MARKET APPRECIATION WAS 6 - 20% PER ANNUM (DEPENDING ON THE SUB-MARKET) DURING THIS TIME.

1999 STARTED OFF QUIET IN ANTICIPATION OF POSSIBLE FALLOUT FROM THE INTERNATIONAL CREDIT CRISIS. THE CONCERN PROVED UNFOUNDED AS CONSUMER CONFIDENCE RETURNED AND THE RESIDENTIAL MARKET RESUMED A STEADY CLIMB FINISHING OUT THE YEAR UP 25%.

THE FIRST 6 MONTHS OF 2000 ACCELERATED THE RISE IN PRICES WITH A RECORD SETTING GAIN OF 20% POSTED BY MID-YEAR. TIME ON THE MARKET WAS DRAMATICALLY REDUCED AND A HIGH PERCENTAGE OF PROPERTIES SOLD AT FULL ASKING PRICE WITH BIDDING WARS BECOMING COMMONPLACE PUSHING SALE PRICES EVEN HIGHER. AVAILABLE INVENTORY OF PROPERTIES ON THE MARKET EVAPORATED AND DECLINING INTEREST RATES FUELED SALES IN EVERY PRICE SEGMENT FOR THE REMAINDER OF THE YEAR.

WHILE THE IMMEDIATE IMPACT FOLLOWING 9-11-01 RESULTED IN A DRAMATIC DROP IN SALES VOLUME AND A MODERATE DECLINE IN PRICING, THE MARKET RECOVERED BY THE 2ND QUARTER OF 2002, SURPASSING PRE 9-11 LEVELS BY MID YEAR. OCCUPIED HOUSING STOCK IN THE AREA REMAINED RELATIVELY INTACT WITH ENVIRONMENTAL ISSUES AND PROXIMITY TO THE WTC SITE NOW FACTORS EFFECTING VALUE.

BUYER CONFIDENCE RETURNED BY MID 2002, SUPPORTED BY CONTINUALLY DROPPING INTEREST RATES THAT KEPT THE ENTIRE RESIDENTIAL MARKET MOVING. SALES VOLUME INCREASED BY 9% OVER 2001 WHILE PRICES GRADUALLY BEGAN RECOVER TO PRE 9-11 LEVELS

## CURRENT MARKET EVENTS:

SALES VOLUME FOR THE FIRST HALF OF 2003 INCREASED, FUELED BY HISTORICALLY LOW INTEREST RATES THAT BOTTOMED OUT IN JULY. AVERAGE SALE PRICES ROSE DURING THE SAME PERIOD AND BIDDING WARS BECAME MORE FREQUENT ALTHOUGH AVAILABLE INVENTORY LEVELS REMAINED RELATIVELY UNCHANGED. INTEREST RATES BEGAN TO CREEP UP DURING THE SECOND HALF OF 2003 WHICH SLOWED PURCHASE VOLUME AS PRICES LEVELED OFF AND FEWER PROPERTIES CAME ONTO THE MARKET. BY SEPTEMBER, INTEREST RATES BEGAN TO DECLINE, REMAINING BELOW 6% FOR THE REMAINDER OF THE YEAR. BY MID NOVEMBER, SALES VOLUME BEGAN TO INCREASE, TIME ON THE MARKET DROPPED FROM 3-6 MONTHS TO 1-3 MONTHS AND BIDDING WARS BECAME MORE COMMON WITH ALMOST 50% FEWER PROPERTIES ON THE MARKET COMPARED TO YEAR END 2002. THESE FACTORS INDICATE A GENERALLY STABLE MARKET FOR THE FORESEEABLE FUTURE, LARGELY DETERMINED BY THE RELATIVELY MARGINAL CHANGES IN INTEREST RATES SEEN FROM SEPTEMBER 2003 THROUGH JANUARY 2004.

## ADDENDUM

Borrower: N/A	File No.: P601535
Property Address: 1050 FIFTH AVENUE	Case No.: MULLINIX v. BOGORAD-GROSS
City: NEW YORK	State: NY Zip: 10028
Lender: SULLIVAN & WORCESTER LLP	

## SUBJECT DESCRIPTION:

THE SUBJECT IS A 5.5 ROOM, 2 BEDROOM APARTMENT LOCATED AT 1050 FIFTH AVENUE. THIS PROJECT IS A FULL SERVICE POSTWAR COOPERATIVE BUILDING SITUATED AT THE NORTHEAST CORNER OF EAST 88TH STREET AND FIFTH AVENUE IN MANHATTAN'S UPPER EAST SIDE NEIGHBORHOOD. AT THE TIME OF THE INSPECTION THE UNIT WAS FOUND TO BE IN VERY GOOD CONDITION WITH RENOVATED KITCHEN AND BATHS.

## COMMENTS ON SALES COMPARISON APPROACH:

COMPARABLES #1 AND #2 ARE THE TWO MOST RECENT, SIMILAR SALES IN THE SUBJECT PROJECT. THESE SOMEWHAT SMALLER TWO BEDROOM UNITS WERE REPORTED TO BE IN SIMILAR/INFERIOR CONDITION RESPECTIVELY. THE FIRST SALE, LOCATED ON THE FIFTH FLOOR OF THE PROJECT IS REPORTED TO HAVE SLIGHTLY INFERIOR LIGHT/VIEWS. BOTH UNITS WERE ADJUSTED FOR THEIR INFERIOR FLOOR LEVEL(S).

COMPARABLE #3 IS A RECENT SALE FROM A NEARBY COMPETING PROPERTY. THIS PROJECT IS LOCATED ON EAST END AVENUE, FAR FROM CENTRAL PARK AND THE LEXINGTON AVENUE TRANSPORTATION CORRIDOR. THIS LOCATION IS RATED INFERIOR TO FIFTH AVENUE. THE UNIT WAS INSPECTED BY AN MMJ APPRAISER WHO FOUND IT TO BE IN SIMILAR CONDITION OVERALL WITH SIMILAR VIEWS. DUE TO THE FINANCIAL STRUCTURE OF THIS COOPERATIVE, THIS UNIT HAS AN INFERIOR MONTHLY MAINTENANCE CHARGE. ACCORDINGLY, AN ADJUSTMENT WAS PROCESSED BY MULTIPLYING THE WEIGHTED DIFFERENCE OF THE MONTHLY CHARGES BY A FACTOR OF \$50.

COMPARABLE #4 WAS SELECTED FROM A COMPETING PROJECT LOCATED ON LOWER FIFTH AVENUE CLOSER TO MIDTOWN WITH ITS SIGNATURE SHOPPING, RESTAURANTS AND CENTRAL BUSINESS DISTRICT. THE LOCATION IS RATED SUPERIOR. THIS SMALLER TWO BEDROOM UNIT WAS REPORTED TO BE IN SIMILAR CONDITION OVERALL WITH SLIGHTLY INFERIOR LIGHT/VIEWS FROM THE SIXTH FLOOR OF ITS PROJECT. DUE TO THE FINANCIAL STRUCTURE OF THIS COOPERATIVE, THIS UNIT HAS AN INFERIOR MONTHLY MAINTENANCE CHARGE. ACCORDINGLY, AN ADJUSTMENT WAS PROCESSED BY MULTIPLYING THE WEIGHTED DIFFERENCE OF THE MONTHLY CHARGES BY A FACTOR OF \$50.

THE FIFTH COMPARABLE IS A CURRENT LISTING FROM THE SUBJECT PROJECT OF UNIT #8C FOR \$1,899,000. THIS UNIT WITH SLIGHTLY INFERIOR VIEWS WAS REPORTED TO BE IN SLIGHTLY INFERIOR CONDITION AND WAS ADJUSTED BY 5% FOR NEGOTIABILITY.

COMP #4 WAS ADJUSTED FOR TIME AT THE RATE OF 2% (POSITIVE) FROM ITS CLOSING DATE TO THE FOURTH QUARTER 2005 WHEN THE MARKET WAS FOUND TO HAVE LEVELED OFF. SEE WWW.MMJA.COM FOR FURTHER SUPPORT.

## FINAL RECONCILIATION:

ALL 3 CLASSIC APPROACHES TO VALUE WERE CONSIDERED IN THIS ANALYSIS. THE SALES COMPARISON APPROACH IS DEEMED MOST APPLICABLE FOR THE SUBJECT PROPERTY. THE FINAL VALUE ESTIMATE IS \$2,100,000. ESTIMATED MARKETING/EXPOSURE TIME IS 1-3 MONTHS.

## SUPPLEMENTAL CERTIFICATION:

THIS IS A SUMMARY APPRAISAL REPORT WHICH IS INTENDED TO COMPLY WITH THE REPORTING REQUIREMENTS SET FORTH UNDER STANDARDS RULE 2-2(b) OF THE UNIFORM STANDARDS OF PROFESSIONAL PRACTICE FOR A SUMMARY APPRAISAL REPORT. AS SUCH, IT PRESENTS ONLY SUMMARY DISCUSSIONS OF THE DATA, REASONING, AND ANALYSES THAT WERE USED IN THE APPRAISAL PROCESS TO DEVELOP THE APPRAISER'S OPINION OF VALUE. SUPPORTING DOCUMENTATION CONCERNING THE DATA, REASONING AND ANALYSIS IS RETAINED IN THE APPRAISER'S FILE. THE DEPTH OF DISCUSSION CONTAINED IN THIS REPORT IS SPECIFIC TO THE NEEDS OF THE CLIENT AND FOR THEIR SPECIFIED USE. THE APPRAISER IS NOT RESPONSIBLE FOR UNAUTHORIZED USE OF THIS REPORT.

DUE TO THE PROXIMITY OF ADJACENT PROPERTIES A REAR PHOTOGRAPH WAS NOT AVAILABLE.

MOST BUILDINGS DO NOT CONTAIN A 13TH FLOOR. WHERE APPLICABLE, THE FLOOR ADJUSTMENT REFLECTS THIS SITUATION.

THIS APPRAISAL WAS COMPLETED IN CONFORMANCE WITH TITLE XI OF THE FEDERAL FINANCIAL INSTITUTION REFORM, RECOVERY AND ENFORCEMENT ACT OF 1989 (FIRREA) AND THE UNIFORM STANDARDS OF PROFESSIONAL PRACTICE (USPAP).

THE OBJECTIVE OF THIS APPRAISAL IS TO ESTIMATE THE FAIR MARKET VALUE OF THE SUBJECT PROPERTY AS OF THE DATE SPECIFIED IN THE REPORT. THE PURPOSE OF THIS REPORT IS TO PRESENT THE DATA AND REASONING THAT THE APPRAISER HAS USED TO FORM THE OPINION OF VALUE. THE SCOPE OF THE APPRAISAL INCLUDES A THOROUGH SEARCH OF ALL AVAILABLE AND APPLICABLE PUBLIC AND PRIVATE DATA SOURCES, A PHYSICAL INSPECTION OF THE SUBJECT PROPERTY AND SURROUNDING AREA AND ALL OTHER REQUIREMENTS UNDER THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP).

DUE TO THE FINANCIAL NATURE OF COOPERATIVES IT IS HIGHLY RECOMMENDED THAT THE CORPORATION BE REVIEWED BY APPROPRIATE LEGAL COUNSEL.

MANHATTAN DOES NOT HAVE A TRADITIONAL MULTIPLE LISTING SYSTEM AND SALES/CONTRACTS ARE NOT READILY AVAILABLE. THE VAST MAJORITY OF THE HOUSING STOCK IS COOPERATIVELY OWNED. THESE COOPERATIVE BUILDING CORPORATIONS ARE PRIVATELY HELD ENTITIES AND AS SUCH, SALES OF STOCK IN THESE CORPORATIONS ARE NOT A MATTER OF PUBLIC RECORD. SINCE SALES INFORMATION IS NOT AVAILABLE THROUGH MLS OR PUBLIC RECORD, THE APPRAISER IS NOT ABLE TO REVIEW ALL COOPERATIVE APARTMENT TRANSACTIONS. TYPICAL DATA SOURCES UTILIZED

## ADDENDUM

Borrower: N/A		File No.: P601635
Property Address: 1050 FIFTH AVENUE		Case No.: MULLINIX v. BOGORAD-GROSS
City: NEW YORK	State: NY	Zip: 10028
Lender: SULLIVAN & WORCESTER LLP		

INCLUDE MANAGING AGENTS, LENDERS, SPONSORS, COOPERATIVE BOARDS, PROJECT ATTORNEYS OR ACCOUNTANTS, THE NEW YORK TIMES RESIDENTIAL RE-SALES, REAL ESTATE BROKERS (WHEN CONFIRMED WITH ANOTHER DISINTERESTED SOURCE), OUTSIDE APPRAISERS, SELLERS, BUYERS, AND OUR INSPECTIONS. LISTING INFORMATION IS OBTAINED FROM AREA BROKERS. VIRTUALLY ALL OF THE DATA IS OBTAINED ON A CONFIDENTIAL BASIS.

**COST APPROACH:**

THE COST APPROACH IS NOT CONSIDERED APPLICABLE FOR INDIVIDUAL UNITS WHICH ARE PART OF A MULTI-UNIT APARTMENT BUILDING. THEREFORE, THIS APPROACH HAS NOT BEEN UTILIZED IN THIS ANALYSIS.

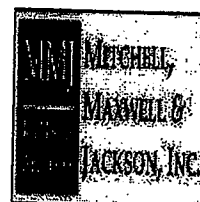
**INCOME APPROACH:**

INDIVIDUAL COOP/CONDO UNITS ARE NOT TYPICALLY PURCHASED FOR THEIR INCOME POTENTIAL. RECORDS REGARDING INCOME/EXPENSES ON UNITS THAT HAVE BEEN PURCHASED FOR THIS REASON ARE NOT PUBLICLY MAINTAINED OR READILY AVAILABLE. THEREFORE, THE INCOME APPROACH WAS NOT CONSIDERED APPLICABLE OR PROCESSED IN THIS VALUATION.



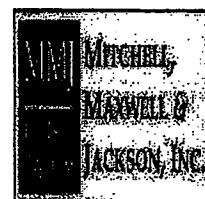
FLOORPLAN

Borrower: N/A	File No.: P601535
Property Address: 1050 FIFTH AVENUE	Case No.: MULLINX v. BOGORAD-GROSS
City: NEW YORK	State: NY
Lender: SULLIVAN & WORCESTER LLP	Zip: 10028



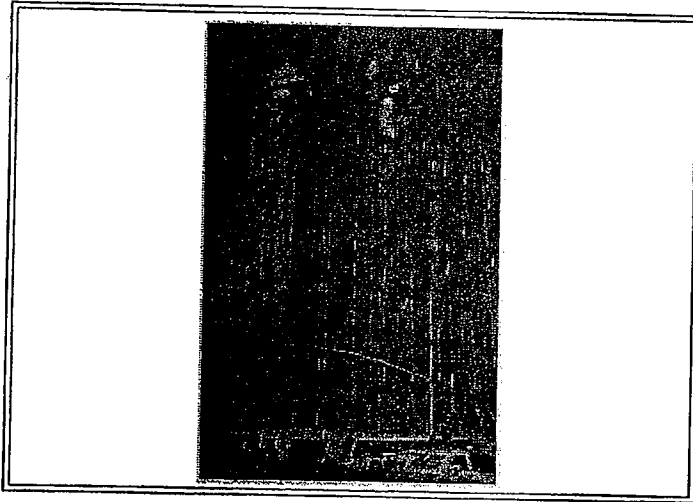
LOCATION MAP

Borrower: N/A	File No.: P601535
Property Address: 1050 FIFTH AVENUE	Case No.: MULLINX v. BOGORAD-GROSS
City: NEW YORK	State: NY
Lender: SULLIVAN & WORCESTER LLP	Zip: 10028



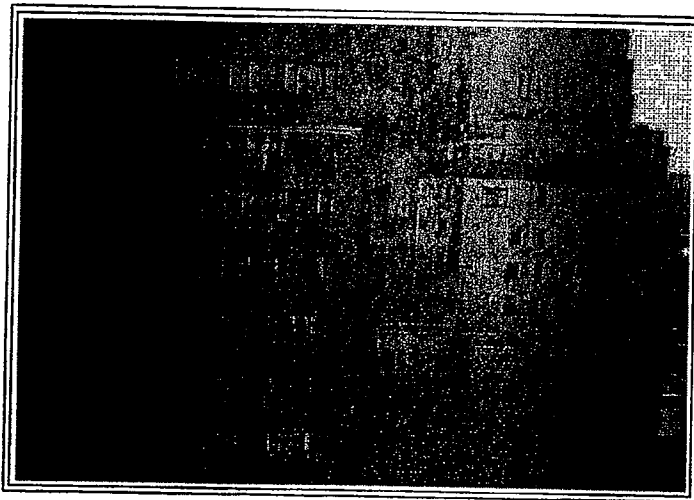
**SUBJECT PROPERTY PHOTO ADDENDUM**

Borrower: N/A		File No.: P601535
Property Address: 1050 FIFTH AVENUE		Case No.: MULLINX v. BOGORAD-GROSS
City: NEW YORK	State: NY	Zip: 10028
Lender: SULLIVAN & WORCESTER LLP		

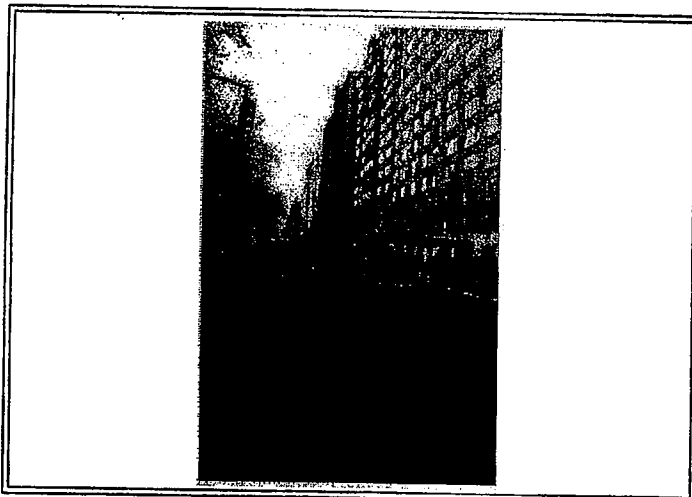


**FRONT VIEW OF  
SUBJECT PROPERTY**

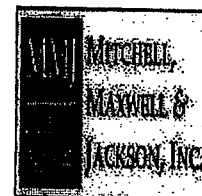
Appraised Date: March 31, 2006  
Appraised Value: \$ 2,100,000



**REAR VIEW OF  
SUBJECT PROPERTY**



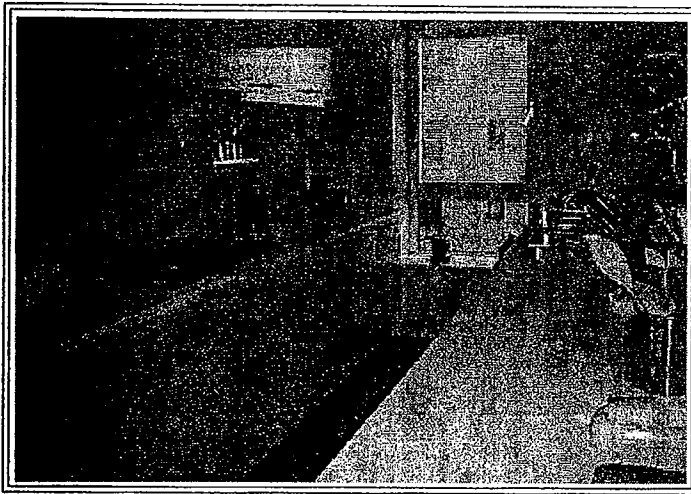
**STREET SCENE**



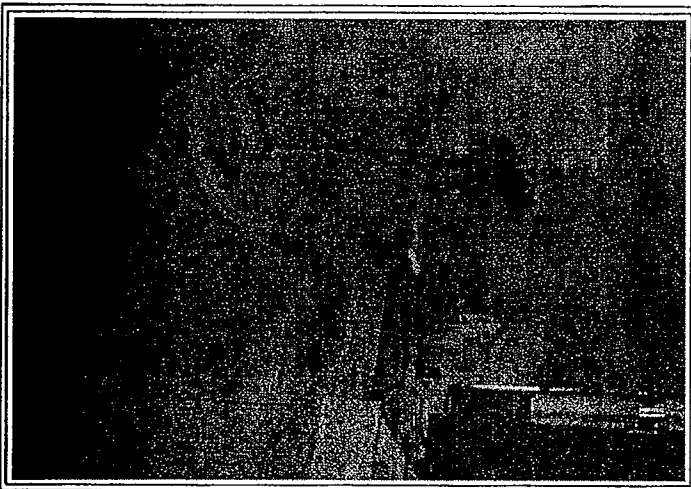
**CONFIDENTIAL  
DEVINE00011**



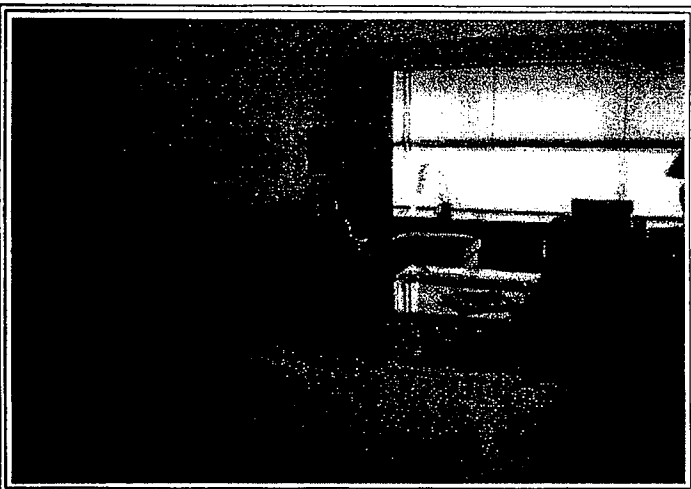
Borrower: N/A	File No.: P601535
Property Address: 1050 FIFTH AVENUE	Case No.: MULLINX v. BOGORAD-GROSS
City: NEW YORK	State: NY
Lender: SULLIVAN & WORCESTER LLP	Zip: 10028



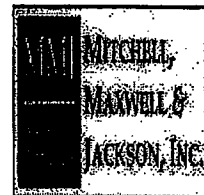
KITCHEN



BATHROOM



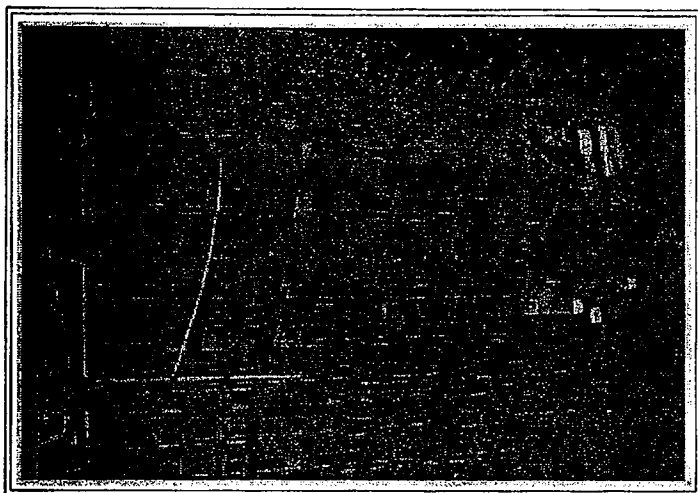
LIVING ROOM



CONFIDENTIAL  
DEVINE00012

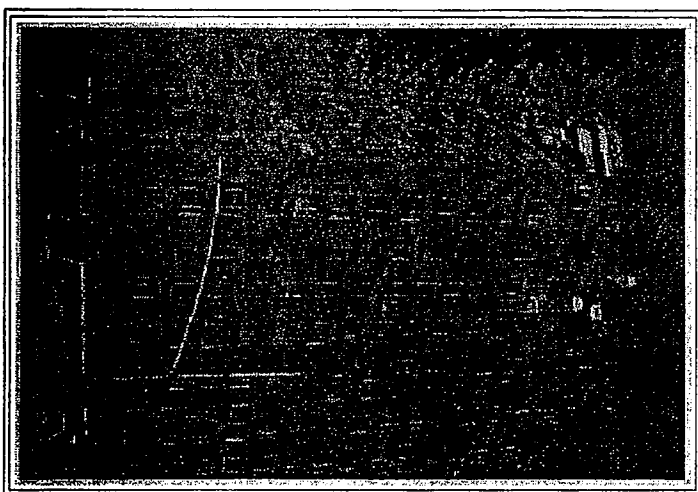
COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: N/A	File No.: P601535
Property Address: 1050 FIFTH AVENUE	Case No.: MULLINIX v. BOGORAD-GROSS
City: NEW YORK	State: NY Zip: 10028
Lender: SULLIVAN & WORCESTER LLP	



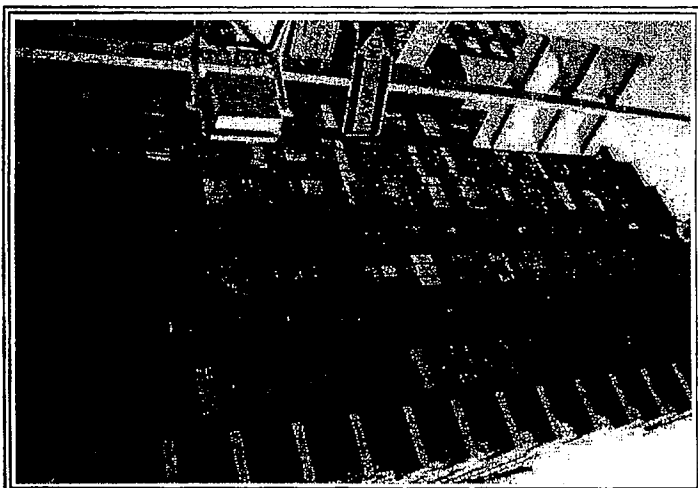
COMPARABLE SALE #1

1050 FIFTH AVENUE  
5C  
Sale Date: 12/05 Clsd  
Sale Price: \$ 1,845,000



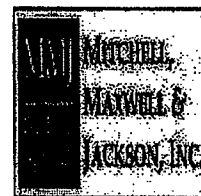
COMPARABLE SALE #2

1050 FIFTH AVENUE  
9/10A  
Sale Date: 11/05 Clsd  
Sale Price: \$ 1,695,000



COMPARABLE SALE #3

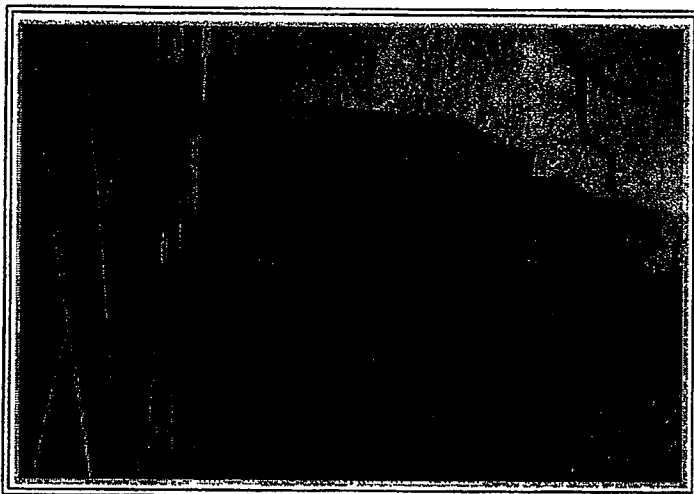
45 EAST END AVENUE, #NEW YORK, NY 10028  
14G/H  
Sale Date: 11/05 CLSD  
Sale Price: \$ 1,740,000



CONFIDENTIAL  
DEVINE00013

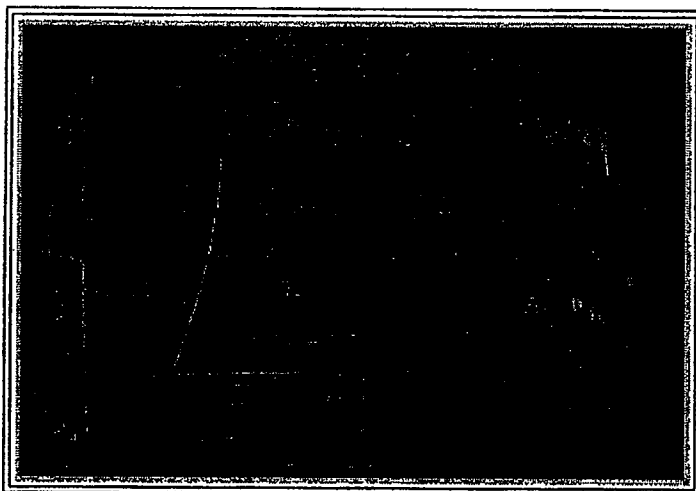
COMPARABLE PROPERTY PHOTO ADDENDUM

Borrower: N/A	File No.: P601535
Property Address: 1050 FIFTH AVENUE	Case No.: MULLINIX v. BOGORAD-GROSS
City: NEW YORK	State: NY Zip: 10028
Lender: SULLIVAN & WORCESTER LLP	



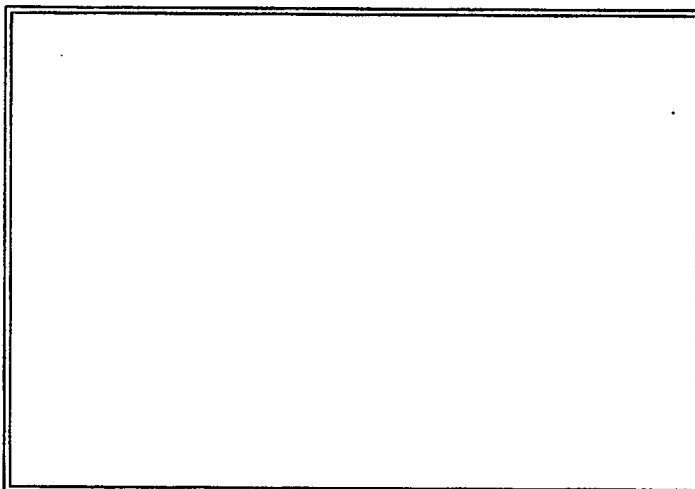
COMPARABLE SALE #4

870 FIFTH AVENUE  
6F  
Sale Date: 07/05 Cisd 2%  
Sale Price: \$ 2,100,000



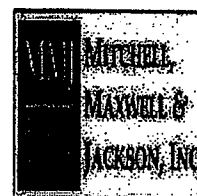
COMPARABLE SALE #5

1050 FIFTH AVENUE  
8C  
Sale Date: 02/06 Listing 5%  
Sale Price: \$ 1,699,000



COMPARABLE SALE #6

NOT USED  
Sale Date:  
Sale Price: \$



CONFIDENTIAL  
DEVINE.00014

MULLINIX v. BOGORAD  
File No. P601535

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the Appraiser's judgment.

#### STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

**CONTINGENT AND LIMITING CONDITIONS:** The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

**CONFIDENTIAL**  
**DEVINE00015**


MULLINIX v. BOGORAD  
File No. P601535**APPRAISERS CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

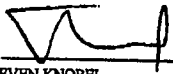
**SUPERVISORY APPRAISER'S CERTIFICATION:** If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

**ADDRESS OF PROPERTY APPRAISED:** 1050 FIFTH AVENUE, NEW YORK, NY 10028

**APPRAISER:**

Signature:   
 Name: CHRISTOPHER DEVINE  
 Date Signed: 04/06/2006  
 State Certification #: 45-39270  
 or State License #: \_\_\_\_\_  
 State: NY  
 Expiration Date of Certification or License: 06/23/2006

**SUPERVISORY APPRAISER (only if required)**

Signature:   
 Name: STEVEN KNOBEL  
 Date Signed: 04/06/2006  
 State Certification #: 45-18006  
 or State License #: \_\_\_\_\_  
 State: NY  
 Expiration Date of Certification or License: 07/06/2007

☐ Did ☒ Did Not Inspect Property

# **EXHIBIT E**

# ORIGINAL

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

KATHLEEN P. MULLINIX,  
Plaintiff,

Civil Action  
No. 04-12684-WGY

vs.

KIKI BOGORAD-GROSS and  
LEONARD P. BOGORAD, as They  
Are Executors of the Will of  
Lawrence Bogorad,  
Defendants.

1290 Avenue of the Americas  
New York, New York

December 13, 2005

10:00 a.m.

DEPOSITION of RENEE RING, before S. Arielle  
Santos, Certified Shorthand Reporter and  
Notary Public.

ELLEN GRAUER COURT REPORTING CO. LLC  
126 East 56th Street, Fifth Floor  
New York, New York  
212-750-6434  
Ref: 79386

1 RING/VARN

2 Q Did you, Ms. Ring, or any other  
3 board member ask Ms. Mullinix at her interview  
4 how often she had or intended to have overnight  
5 guests?

6 A Yes.

7 Q And what did she respond?

8 A My recollection is that she  
9 responded she did not have guests.

10 Q Did you, Ms. Ring, or other  
11 members of the board ask Ms. Mullinix at her  
12 interview why she wanted to buy an apartment in  
13 the 1050 Fifth Avenue building?

14 A Yes.

15 Q And what did she respond?

16 A My recollection is that she  
17 responded she had an offer she could not refuse  
18 on her condo at the Gotham and that's why she was  
19 selling it. One of her neighbors she told us  
20 wanted to buy her apartment.

21 Q And did she say anything in words  
22 or substance as to why, apart from the reasons  
23 for selling her condominium, that she chose 1050  
24 Fifth Avenue as a prospective residence?

25 A I have a vague recollection.



1 RING/VARN

2 company.

3 Q Did Ms. Mullinix ever at that  
4 interview or subsequently inform you, in words or  
5 substance, that she intended to rely upon wealth  
6 or finances from any other person in connection  
7 with her purchase and occupancy at 1050 Fifth  
8 Avenue?

9 A No.

10 Q Did you or any other board member  
11 ask Ms. Mullinix what she was planning to do with  
12 the apartment at 1050 if she purchased it?

13 A I don't know that I understand  
14 your question.

15 Q Well, I believe you had testified  
16 among the standard questions asked of an  
17 interviewee was what he or she was planning to do  
18 with the apartment.

19 And so my more specific question  
20 was, did you or any other board member ask  
21 Ms. Mullinix what she planned to do with the  
22 apartment if she bought it?

23 A I believe we did and I believe  
24 that she responded she would have renovated it.

25 Q Was there any discussion, if you

# **EXHIBIT F**

**RUBIN AND RUDMAN LLP**

COUNSELLORS AT LAW

50 ROWES WHARF • BOSTON, MASSACHUSETTS 02110-3319

TELEPHONE: (617) 330-7000 • FACSIMILE: (617) 439-9556 • EMAIL: FIRM@RUBINRUDMAN.COM

Matthew A. Berlin  
Direct Dial: (617) 330-7177  
E-mail: mberlin@rubinrudman.com

February 11, 2004

VIA FACSIMILE AND HAND DELIVERY—RECEIPT REQUESTED

Larry C. Kenna, Esq.  
Choate Hall & Stewart  
Exchange Place  
Boston, MA 02109

**Re: Estate of Lawrence Bogorad**

Dear Larry:

In furtherance of our conversation yesterday afternoon, I had understood that Kathleen Mullinix had already signed a contract to renovate her apartment, albeit subsequent to Lawrence Bogorad's death and after being advised by the named Executors of the Estate not to expect reimbursement. I learned from my clients this morning that she has not yet signed a contract. This being the case I want to make it absolutely clear that based on the information presented to date my unequivocal advice to Leonard Bogorad and Kiki Bogorad-Gross is that they cannot honor this claim consistent with their fiduciary duty. Any actions Ms. Mullinix may take in reliance on Lawrence Bogorad's alleged previous commitment would be misplaced, and she should not take on any financial commitments or otherwise based on a belief that the Estate will reimburse her. I understand from you that in Ms. Mullinix's view the renovations were an integral part of her joint undertaking with Lawrence Bogorad. Please communicate to her that presently the named Executors do not concur that the renovations or any part of them or the carrying costs of the co-op are the Estate's responsibility and any commitments she may make in that regard would be at her own risk.

As I indicated yesterday, I will be out of town until February 25<sup>th</sup>, and will be happy to discuss this matter further upon my return.

Sincerely,

  
Matthew A. Berlin

RUBIN AND RUDMAN LLP

Larry C. Kenna, Esq.  
February 11, 2004  
Page 2

cc Leonard Bogorad  
✓ Kiki Bogarod-Gross  
Thomas Whitney, Esq.

# EXHIBIT G

1997 Edition - Electronic Format

AIA Document A101-1997

**Standard Form of Agreement Between Owner and Contractor**  
**where the basis of payment is a STIPULATED SUM**

AGREEMENT made as of the 17th day of March in the year of 2004  
(In words, indicate day, month and year)

BETWEEN the Owner:  
(Name, address and other information)  
Kathleen P. Mullinix  
1050 Fifth Avenue / Apt. 15B  
New York, NY 10028

and the Contractor:  
(Name, address and other information)  
McGrath Woodworking Inc.  
5-15 48th Avenue  
Long Island City, NY 11101

The Project is:  
(Name and location)  
The Renovation of the Mullinix Residence  
1050 Fifth Avenue / Apt. 15B  
New York, NY 10028

The Architect is:  
(Name, address and other information)  
Heather Aman Design  
347 West 36th Street / Suite 1501  
New York, NY 10018

The Owner and Contractor agree as follows.

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

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3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

The targeted Commencement of Work Date is April 07, 2004 or as soon as notification that all required approvals / permits have been granted and received.

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

3.2 The Contract Time shall be measured from the date of commencement.

3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

Four months from the Date of Commencement of Work which shall be extended, if applicable, by additional work (approved change orders) or by delays related to work performed by Contractors outside of this Contract.

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

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#### ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three hundred Fifty thousand Dollars (\$ 350,000.00 ), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

4.3 Unit prices, if any, are as follows:

See attached Addendum A:

McGraine Woodworking Inc.'s Proposal dated February 23, 2004, 2 pages

See attached Addendum B:

McGraine Woodworking Inc.'s Phased Payment Schedule dated March 17, 2004, 1 page

Note: Phased payments to be wired to McGraine Woodworking Inc.'s Citibank Account.



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#### ARTICLE 5 PAYMENTS

##### 5.1 PROGRESS PAYMENTS

5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor

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and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

5.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~every three week~~ day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than seven (7) days after the Architect receives the Application for Payment.

5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997.
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%).
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

See 5.1.8.

~~5.1.7~~ The progress payment amount determined in accordance with Subparagraph 5.1.6 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Subparagraph 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

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2. Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of AIA Document A201-1997.

5.1.8 Reduction or limitation of retainage, if any, shall be as follows:  
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Clauses 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Upon Substantial Completion of the job, the retainage of 10% shall drop to 5%. If specific items of punchlisted work persist in delaying Final Completion, the Owner shall, at her discretion, make partial payment of the final retainage payment. Nonetheless, three times the value of the uncompleted work should be retained until total completion of the job.

5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## 5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

1. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
2. a final Certificate for Payment has been issued by the Architect.

5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

## ARTICLE 6 TERMINATION OR SUSPENSION

6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
(Insert rate of interest agreed upon, if any.)

### Prime Rate

Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 The Owner's representative is:  
(Name, address and other information)

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7.4 The Contractor's representative is:  
(Name, address and other information)

7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

7.6 Other provisions:

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#### ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

AIA Document A101-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

This document has been approved and endorsed by The Associated General Contractors of America.

Document	Title	Pages
----------	-------	-------

8.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 8.1.3, and are as follows:  
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
---------	-------	-------

Mullinix Residence Specifications dated January 12, 2004

8.1.5 The Drawings are as follows, and are dated December 15, 2003 unless a different date is shown below:  
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
A-01	General Notes	
A-02	Plot Plan and Riser Diagrams	
A-03	Demolition Plan	
A-04	New Construction Plan	
A-05	Bathroom Plans and Elevations	
A-06	Kitchen Details	
A-07	Bathroom Plans and Elevations	
A-08	Bathroom Plans and Elevations	
A-09	Foyer Elevations	
A-10	Living Room Elevations	
A-11	Dining Room Elevations	
A-12	Master Bedroom Elevations	
A-13	Bathroom Plans and Elevations	
A-14	Millwork Details Schedules	
E-01	Electrical and Lighting Plan	



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## 8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
--------	------	-------

Addendum A:McGraine Woodworking Inc. Proposal dated February 23, 2004. 2 pagesAddendum B:McGraine Woodworking Inc. Phased Payment Schedule dated March 17, 2004. 1 page

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

## 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

1050 Fifth Avenue, Inc. Alterations Agreement

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

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This document has been approved and endorsed by The Associated General Contractors of America.

Kathleen P. Mullinix  
OWNER (Signature)

Glenn H. Jr.  
CONTRACTOR (Signature)

Kathleen P. Mullinix  
(Printed name and title)

Glenn H. Jr.  
(Printed name and title)



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212 736 0480

**ADDENDUM B: McGraime Woodworking Inc. Phased Payment Schedule**

**MCGRAIME WOODWORKING INC.**

5-15 48<sup>th</sup> Avenue Long Island City NY 11101  
(718) 472-3201 Fax (718) 472-3257

March 17, 2003

- I. Deposit - \$ 35,000.00
- II. Payment on Demolition - \$ 52,500.00
- II. Tri-weekly Progress Payments as per AIA Documents G702 / G703 (10% retainage)
- III. Payment on Substantial Completion <sup>(1)</sup> (5% retainage)
- IV. Final Payment <sup>(2)</sup> on Satisfaction of Punch List

Notes: <sup>(1)</sup> Substantial Completion is the completion of work less the final punch list (i.e. minor adjustments, touch-ups and installation of fixtures or accessories outside of this Contract and provided by others but not yet received).

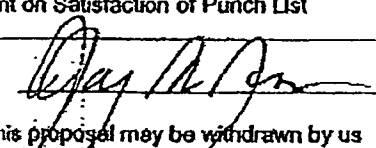
<sup>(2)</sup> Less retainage of three times the value of work remaining, if any, due to long lead time or conditions beyond our control.

The above phased payments are to be wired into McGraime Woodworking Inc.'s Citibank Account as follows:

Citibank N.A.  
170 West 72nd Street, NY, NY 10023  
ABA#: 021-00089  
Acct#: 01307282 (McGraime Woodworking Inc.)



**Addendum A: McGraine Woodworking Inc Proposal dated 2-23-04**

<b>MCGRAIME WOODWORKING INC.</b> 5-15 48th Avenue Long Island City NY 11101 (718) 472-3201 • Fax (718) 472-3257		<b>PROPOSAL REVISED</b>																																														
SUBMITTED TO: Heather Aman Heather Aman Design  RE: Mullnix Residence Proposal		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="padding: 2px;">JOB NAME/NO. Mullnix Residence</td> </tr> <tr> <td colspan="2" style="padding: 2px;">JOB LOCATION 1050 Fifth Avenue / Apt. 15B, New York NY 10028</td> </tr> <tr> <td style="padding: 2px;">ARCHITECT/DESIGNER Heather Aman Design</td> <td style="padding: 2px;">DATE OF PLANS December 15, 2003</td> </tr> <tr> <td colspan="2" style="padding: 2px;">APPROXIMATE STARTING DATE <u>Immediately On Approval</u></td> </tr> <tr> <td colspan="2" style="padding: 2px;">APPROXIMATE COMPLETION DATE <u>Four Months</u></td> </tr> </table>		JOB NAME/NO. Mullnix Residence		JOB LOCATION 1050 Fifth Avenue / Apt. 15B, New York NY 10028		ARCHITECT/DESIGNER Heather Aman Design	DATE OF PLANS December 15, 2003	APPROXIMATE STARTING DATE <u>Immediately On Approval</u>		APPROXIMATE COMPLETION DATE <u>Four Months</u>																																				
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Notes: (1) Drawings and samples will be provided for approval. (2) A Certificate of Capital Improvement will be provided to exempt the above from sales tax.																																																
We Propose hereby to furnish material and labor – complete in accordance with above specifications																																																
Three hundred fifty thousand dollars and 00/100		Dollars \$ <u>350,000.00</u>																																														
Payment Schedule (1) Deposit \$ 35,000.00 (2) Payment on Demolition \$ 52,500.00																																																
(3) Tri-weekly Progress Payments as per AIA G702 and G703																																																
(4) Retainage reduced to 5% on Substantial Completion (5) Final Payment on Satisfaction of Punch List																																																
All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the proposal. All agreements contingent upon strikes, accidents or delays beyond our control.		Authorized Signature   Note: This proposal may be withdrawn by us if not accepted within 15 days.																																														
Acceptance of Proposal. I have read this document and accepted the prices, specifications and conditions stated. I understand that upon signing, this proposal becomes a binding contract. You are authorized to do the work as specified. Payment will be made as outlined.																																																
Signature _____		Date _____																																														

**Addendum A: McGraime Woodworking Inc. Proposal dated 2-23-04**

**MCGRAIME WOODWORKING INC.**

5-15 48<sup>th</sup> Avenue Long Island City NY 11101  
(718) 472-3201 Fax (718) 472-3257

February 23, 2004

**MULLINIX: Add Options and Appliances Addendum**

Kitchen Pionite lower and full height doors and exteriors	\$ 3,550.00
Kitchen valence below upper cabs	1,075.00
Kitchen Chemetal Upper doors and exteriors	2,750.00
M Bedroom cabs and base in Oak	4,000.00
Bed #2 HVAC and base in Oak	1,200.00

Closet #1 add receptacles x 3	360.00
Sm Bath 3/8" bronze trim strip	500.00
M Bath toe kick heater and GFI	450.00

\$ 13,885.00 \*

Appliances FBO	
Installation of all appliances	\$ 1,600.00
Provide Meile 36" hood DA329 including fascia and filters	929.00

\$ 2,509.00 \*

\* Above cost is net (add 15% profit and overhead)



# **EXHIBIT H**

**Solfanelli, Sara E.**

---

**From:** Kathleen Mullinix [kathleenpmullinix@yahoo.com]  
**Sent:** Thursday, March 11, 2004 7:02 AM  
**To:** kikibg@hotmail.com; lbogorad@rcico.com  
**Subject:** Transition

Dear Kiki and Len,

I'm writing to share some thoughts with you as you prepare to dispose of the house in Lexington. As we have discussed, I would like to spend time here, most likely several days each week, until my home in New York is ready. I also plan to do everything that I can to help to make the transition is as smooth as possible. With that in mind, I have some suggestions.

It seems to me that it would be helpful if I consolidated my things in order to make more of the space in the house readily accessible. I propose to try to confine my things to the bedroom and the small room on the first floor. I will move my things out of the small bedroom on the second floor and will continue to use the office desk, but will arrange my things in the room to be as organized as possible. As you know, I brought many of my personal things with me when I moved here last April. Many of those things are in the small room downstairs. In addition, there are many things of my mother's in that same room that I brought here after her death last March. I will organize those things to make them as consolidated as possible. That should facilitate the work of the painters. I also have a few things in the basement, including my golf clubs and some of our outside furniture that we brought from New York. I hope that those things will not interfere with the organization of that space.

I would like to keep those many of your father's clothes that have sentimental value. I have, however, been emotionall unable to go through his clothes and would like them to remain in place in the closets and drawers until I can work wit them. As I mentioned to Kiki, I would like to keep some of his books, especially his old scientific texts and the books that he edited.

I will be away for ten days, beginning on March 18. I think that it is a good time for me to arrange to forward the mail to Kiki, with the hope that I could pick up my mail from Kiki from time to time.

I look forward to receiving your thoughts on these suggestions. I reiterate my offer to be of assistance in any aspect of this process on which you think I could be helpful.

Best regards,

Kathy

---

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# **EXHIBIT I**

**Dineen Jerrett, Michelle L.**

---

**From:** Kiki Gross [kikibg@hotmail.com]  
**Sent:** Wednesday, May 12, 2004 6:39 AM  
**To:** kathleenpmullinix@yahoo.com  
**Subject:** Various

Sorry, Kathy, I started this yesterday and got interrupted....

Thanks for the Mother's Day Greetings. Hope you got back to NY ok and then went out to dinner or something. And yes, it is good to be past that toddler stage, although breakfast in bed, even though it was usually cold, was kind of a nice treat.

I don't feel as if I need to be at Dad's office when they go through things - I'm sure I wouldn't know what was important. If there are personal things that are left, I'd like a chance to see them, I guess. You probably have things that you'd want more than me. Thanks for asking, though. It's kind of hard to think about that space not being his (or relating to us)- so many years of waiting downstairs in the car flashing the lights! (Sorry!)

In terms of the house, I'll be clearing things out over the next few weekends I guess - there's so much. Please let us know if there's anything you want. I will keep an eye out for your bracelet. We are planning on closing on the last Friday of June - I think that's the 25th. I was hoping to have another weekend, but I guess that's not going to happen. I hope this will work for you. If you need help with anything, please let us know.

In terms of the car, I think that Len will be taking it - it will be nice to keep it in the family I think. I would like to take it to the Saab dealer to get it checked out first and then would actually like to "borrow" it for a few weeks after Dan comes home (end of May). I hope that's ok. You're welcome to "borrow" it back when you like if you want to drive it again. If I make an appointment for sometime next week, will that work for you?

Talk to you soon,  
Kiki

----- Original Message -----

**From:** Kathleen Mullinix  
**To:** kikibg@hotmail.com  
**Sent:** Sunday, May 09, 2004 9:51 PM  
**Subject:** Various

Dear Kiki,

Happy Mother's Day-I hope that you had a great day. It always seemed so good to me to be beyond the toddlers' crawling into bed with the spilling orange juice and the toast (or other safe item) slipping off the plate.

I have a few things:

- 1) Maybe you could be on the lookout for a rather heavy linked gold bracelet around the house. I don't seem to have it, the clasp is not the greatest, and it could be anywhere. In the event that it fell on one of the rugs, you might see it. I'm hoping that it is with me somewhere, or mixed up in the bed.
- 2) The administrator at Harvard has asked about cleaning out your father's office. The plan is that they will send an archivist some time soon who will do whatever he or she does. I don't know what they do but Jay Ballofet said it is not necessary to be present (I had the impression that they prefer

Case 1:04-cv-12684-WGY Document 36-12 Filed 05/25/2006 Page 3 of 3  
that the archivist does his or work alone). After that, we are free to go through the things, take what we want, and they will dispose of the remaining things. Alice Cheung and Maureen Hanson have offered to go through the things with me and identify what belongs to whose work. We are planning to ask people if they want their material, note books, photos, etc. (He took pictures of everyone in the lab. I'm assuming that they are there somewhere.) Please let me know if you and/or Len want to be involved in that process, and I will certainly arrange the schedule around your availability. Of course, at the end of the day, any personal items that remain would be assembled for your examination before things are finally removed.

3) Also in the schedule department, could you tell my by what date I must have all of my things out of the house?

Best regards,  
Kathy

---

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# EXHIBIT J

**Solfanelli, Sara E.**

---

**From:** Kathleen Mullinix [kathleenpmullinix@yahoo.com]  
**Sent:** Saturday, May 15, 2004 3:08 PM  
**To:** kikibg@hotmail.com  
**Subject:** House, etc.

Dear Kiki,

Having emptied my parents' house, I don't envy you your task. I hope your knees hold out better than mine did. I'm also worried about your shoulder.

I'm not sure when I'll be up in Lexington next. I'd planned on being there over Memorial Day but "Grandparents' Day" is on the 27th at Jack's school and Kathleen has asked me to attend. Considering all of the trauma in December, I can't really say no. So that's to be figured out.

With respect to the car, I did not experience a burning smell so that's got to be something new. I would like to take some pictures of the car when I come up. I'd hoped to take pictures at the house so I hope that will be OK.

I would like to have the Japanese print that is in the living room by the stereo. Your father loved that and he had planned to bring it to New York. If no one else wants the two small chairs in the living room or the dining room furniture, I'd be very happy to take those things.

I would so like to have all of his clothes--his jackets with the hoods that he loved, on and on. I know that is ridiculous but if the clothes could stay a bit longer maybe I could have a more settled view of reality and the inevitable. I think that I have the idea that as long as his clothes remain he might come back. I remember that the first thing that I did when I got back from Mexico was to put his comb and brush and his toothbrush back in the bathroom. I'm afraid I'm still there a bit.

I have an Internet connection here at the furnished studio that I have rented on 74th Street while that apartment is being renovated.

That's it for now. My thoughts are with you.

Kathy

---

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11/14/2005

KPM 0144

**Solfanelli, Sara E.**

---

**From:** Kiki Gross [kikibg@hotmail.com]  
**Sent:** Saturday, May 15, 2004 8:37 AM  
**To:** kathleenpmullinix@yahoo.com  
**Subject:** this weekend

Hi Kathy - I wasn't sure if you were going to be in Lexington this weekend but wanted to check in. I was planning on going out and starting to clean out the kitchen - I'll start with old spices, canned goods, etc. If there's anything that you can think of that you want, please let me know. I don't want to throw anything out that's yours.  
Is there anything else in the house you'd like - Dad's Harvard chair, etc? Just let me know, k?

We were also planning on taking the Saab to the garage on Monday (will pick up on Sunday) to get it checked out - there also seems to be some burning smell. Hope that's ok.

Did you get your internet connection (Blackberry, etc.) worked out in NY? I hope so.  
Talk to you soon,  
Kiki

11/14/2005

KPM 0143

# EXHIBIT K

**Solfanelli, Sara E.**

---

**From:** Kathleen Mullinix [kathleenpmullinix@yahoo.com]

**Sent:** Thursday, May 27, 2004 5:04 PM

**To:** kikibg@hotmail.com

**Subject:** Next week

Dear Kiki,

I'm thinking of you and hoping that you are not too overwhelmed by the process of working on the house. I found the process of dismantling my parents' house to be very difficult---on many levels.

I plan to drive up to Lexington on Tuesday afternoon and to move my things out of the house over the following few days. Thank you for offering the furniture. In that regard, it occurs to me that if no one wants the wall unit in the living room, I would be happy to have it. I don't know if I'll be able to move the furniture out of the house on this trip, but I hope to do that. In any event, I'll have it moved by the 17th or 18th. If I can help you on the house in general while I'm there I would be happy to do so. Just let me know.

That's all for now- hope all is well with you.

Kathy

---

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11/14/2005

KPM 0148



# EXHIBIT L

From: Kathleen Mullinix  
To: [kikibg@hotmail.com](mailto:kikibg@hotmail.com)  
Sent: Friday, May 28, 2004 3:31 PM  
Subject: Follow-up

Dear Kiki,

Thanks for your note. After all that, I have changed my plan and will come up to Lexington on June 8. It turns out that I have a work obligation that just appeared this morning that requires me to be in New York on Wednesday and Thursday. I hope that is OK--also gives me more time to figure out how to move the furniture. I'm so happy that Dan can help with the wall unit-especially if I'll be the beneficiary! I would like to take the Saab for a bit of a ride at a convenient time-and, of course, to take some pictures.

Yesterday, I wrote you an e-mail, pressed "send"--I thought--and the screen went to "Page cannot be displayed",-and I couldn't find it anywhere! What I sent you was the streamlined version. I had said that the archivist would come, do whatever she does on June 2, and then I was hoping that Alice and Maureen Hanson will be able to help identify things for distribution to any former students who want whatever of their work. I'm thinking that it would be good to get the archivist there, after which there is no particular sense of urgency with the project--although it will be great to finish and I do have the feeling that there are now plans for the space. I called today and Julia arranged for the archivist--your friend--to come the next week.

I actually went to Jack's school yesterday. It was wonderful and he was so adorable. I hadn't realized until Wednesday that there were no parents involved, so I was really glad to be there.

'm so glad to know that Dan is home.

Kathy

---

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# EXHIBIT M

**Solfanelli, Sara E.**

---

**From:** Kathleen Mullinix [kathleenpmullinix@yahoo.com]  
**Sent:** Friday, June 11, 2004 1:22 PM  
**To:** kikibg@hotmail.com  
**Subject:** Weekend

Dear Kiki,

I have realized that it will be necessary for me to stay here in the house until Sunday. I want to spend this time in the presence of your father's spirit. I had planned to leave today but I now know that it is not possible for me to do so.

I have some memory of your saying on Wednesday that someone is coming tomorrow. That is fine with me, just let me know what to expect.

If I can help out with anything, just let me know.

Kathy

---

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11/14/2005

KPM 0151

# **EXHIBIT N**

**Solfanelli, Sara E.**

---

**From:** Kiki Gross [kikibg@hotmail.com]  
**Sent:** Sunday, May 16, 2004 7:57 PM  
**To:** Kathleen Mullinix  
**Subject:** Re: House, etc.

Kathy - Thanks for getting back to me. I'm glad that you have rented a place in NY. I hope that it's comfortable. It must be nice to oversee the construction without having to live in it.

Thanks for your concern about the house and my shoulder. I'm trying to not undo any good I've gotten from Physical Therapy. I went through the drawers in Len's room and downstairs this weekend so they are basically emptied. It looked like your things were only on top of the dressers upstairs and separate in the downstairs rooms. Of course you're welcome to do a photo session with the car and house. We are going to be closing on that last Friday on June but the people who are taking most of the furniture (bedroom stuff) will be coming the weekend before. I'm sorry to keep moving things up, but because of the weekends that's how it's working out. Can I let you know about the furniture? The print is all yours.

I can understand your wanting to keep all his clothes - if you want me to go thru things with you I can. If you have any ideas of what you'd like us to do with the things you don't want (what would make you feel best), please let me know.

That's all for now. Have a good week if we don't talk before then.  
Kiki

— Original Message —

**From:** Kathleen Mullinix  
**To:** kikibg@hotmail.com  
**Sent:** Saturday, May 15, 2004 3:07 PM  
**Subject:** House, etc.

Dear Kiki,

Having emptied my parents' house, I don't envy you your task. I hope your knees hold out better than mine did. I'm also worried about your shoulder.

I'm not sure when I'll be up in Lexington next. I'd planned on being there over Memorial Day but "Grandparents' Day" is on the 27th at Jack's school and Kathleen has asked me to attend. Considering all of the trauma in December, I can't really say no. So that's to be figured out.

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11/14/2005

KPM 0145

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That's it for now. My thoughts are with you.

Kathy

---

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